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THE

LAWS

RELATING TO

THE POOR.

INCLUDING THE COLLECTIONS ORIGINALLY MADE BY

E. BOTT, Esq.

AND AFTERWARDS EDITED BY

F. CONST, Esq.

THE SIXTH EDITION:

IN WHICH

THE STATUTES AND CASES, TO HILARY TERM 1827, ARE ARRANGED UNDER THEIR RESPECTIVE HEADS;

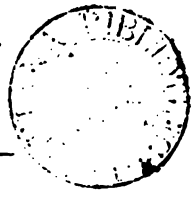
AND THE WHOLE SYSTEM OF THE POOR-LAWS IS PLACED IN A CLEAR AND PERSPICUOUS POINT OF VIEW.

By JOHN TIDD PRATT,

OF THE INNER TEMPLE, ESQ., BARRISTER AT LAW.

IN TWO VOLUMES.

VOL. II.



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A

TABLE

OF THE

DIVISIONS OF THE SECOND VOLUME.

CHAP. I.

SETTLEMENT BY BIRTH.

	Pages
1. Of illegitimate Children - - -	1 to 10
2. Of legitimate Children - - - -	10—15

CHAP. II.

SETTLEMENT BY PARENTAGE.

1. By Settlement of THE FATHER - - -	16—20
2. ——————— THE MOTHER - - -	20—26
3. Of Emancipation - - - - -	26—55

CHAP. III.

SETTLEMENT BY MARRIAGE.

1. The Marriage Acts - - - - -	56—56
2. Of the Marriage; and the EVIDENCE necessary to prove it - - - - -	56—66
3. Of the WIFE's Settlement in Right of the HUSBAND	66—67
4. ——————————— her own Right -	67—71
5. Of the Removal of the WIFE - -	71—80

CHAP. IV.

SETTLEMENT BY RENTING A TENEMENT OF TEN POUNDS A-YEAR.

1. The Statutes - - - - -	81— 81
2. The Kind of Tenement - - - -	81—113
3. The Species of Tenure - - - -	113—141
4. The Value of the Tenement - - -	141—156
5. The TIME for which the Tenement must be holden	156—162
6. The Residence necessary - - -	163—172

CHAP. V.

SETTLEMENT BY SERVING AN OFFICE.

Page
1. The Statutes - - - - - 173
2. Of the OFFICE and the APPOINTMENT to it - 173
3. Of the TIME and PLACE of serving the Office - 187

CHAP. VI.

SETTLEMENT BY HIRING AND SERVICE.

1. The Statutes - - - - - 194
2. Of Persons who may be hired as Servants - 194
3. Of the Contract of hiring - - - 205
4. Of general Hiring - - - - 222
5. Of particular or special Hiring - - - 238
6. Of customary Hiring - - - 268
7. Of retrospective Hiring - - - - 275
8. Of conditional Hiring - - - 278
9. Of several Hirings - - - - 282
10. Of Service in different Places - - - 303
11. Of Service with different MASTERS - - 322
12. Of Marriage during Service - - - - 324
13. Of Absence from the Service - - - 327
14. Evidence of Hiring and Service - - - 382

CHAP. VII.

SETTLEMENT BY APPRENTICESHIP.

1. The Statutes - - - - - 390
2. Of THE BINDING necessary to gain a Settlement 390
3. Of the TIME and PLACE of Inhabitancy - 414
4. Of discharging the Indentures - - 432
5. Of binding to one Master and Service with another 442
6. Of Apprenticeship under Certificates - - 467
7. Evidence of Apprenticeship - - - 481

CHAP. VIII.

SETTLEMENT BY ESTATE.

1. The Statutes - - - - - 490
2. Of the Kind of Estate - - - - - 490
3. Of the Value of the Estate - - - 546
4. Of the Residence necessary - - - 554
5. Of certificated Persons - - - 565

CHAP. IX.

OF PERSONS IRREMOVABLE UNTIL CHARGEABLE.

	Pages
1. The Statutes	573 to 573
2. Who shall be deemed chargeable	573—593
3. How the Settlement of such Persons may be inquired into	593—597

CHAP. X.

OF CERTIFICATES.

1. The Statutes	598—598
2. The Form and Manner of granting Certificates	598—612
3. Of the Effect of Certificates	612—635
4. Continuance and Determination of Certificates	635—656
5. Of Evidence	656—658

CHAP. XI.

REMOVAL OF THE POOR.

1. The Statutes	659—659
2. The Authority of THE JUSTICES	659—668
3. The Style of the Justices	668—670
4. The Complaint to be made	670—672
5. The Examination	672—685
6. The Adjudication	685—691
7. The Direction of the Order	691—693
8. Description of the Parties	693—694
9. Of Passes	694—697
10. Suspending Order of Removal or Pass	697—706
11. Of returning after Removal	706—709
12. Of Orders unappealed from	709—725
13. Of Removals after Appeal	725—731

CHAP. XII.

APPEAL TO THE SESSIONS.

1. The Authority of the Sessions	732—739
2. Who may appeal	739—739
3. Notice of Appeal	739—744
4. The Sessions to which the Appeal must be made	744—755
5. Of Adjournment	755—757
6. Of stating special Case	757—770
7. Of the Superintendency of King's Bench	770—776
8. Of Costs and Charges	776—778
9. Of Certiorari	778—783
10. Of Evidence	783—797

INDEX TO THE CASES

IN

THE SECOND VOLUME.

The figures which follow the names, refer to the *placitum* or number of the case.

A.

Albrighton v. Skipton, 797.
Alderton v. Felingtowe, 913.
All Saints' v. St. Giles's, 730.
Alton v. Elvetham, 400.
Anonymous, Dalton, 168.—25.
Anonymous, MSS. 489.
Anonymous, 3 Salk. 473.—795.
Anonymous, Comb. 478.—815.
Anonymous, Sett. & Rem. 39.—843.
Anonymous, Str. 315.—943.
Anonymous, Foley, 261.—945.
Anonymous, 2 Salk. 486.—984.
Anonymous, 1 Vent. 310.—1000.
Anthony v. Cardigan, 257.
Appotens v. Dunswell, 102. 106.
Ashbrittle v. Wyley, 610.
Ashburton v. Woodland, 204.
Ashcroft v. Bertles, 549.
Awre v. Newnham, 172.

B.

Baldwin v. Blackmore, 885.
Barleycroft v. Coleoverton, 710.
Battersea v. Westham, 930.
Bedwich's case, 859.
Bedworth v. Fillongley, 174.
Berkhampstead v. St. Mary Northchurch, 51.
Binfield v. Banstead, 862.
Bisham v. Cook, 234.
Bishop's Hatfield v. St. Peter's, 395.
Bodmin v. Warligen, 982.
Borcham v. Waltham, 4.
Braitar v. Usley, 780.
Bridewell v. Clerkenwell, 776.
Brightwell v. Westhalley, 366.
Buckington v. Shepton Bechamp, 539.
Bugden v. Ampthill, 60.
Burclear v. Eastwoodhey, 681.
Burton and Claveley, cases of, 23.
Bury v. Arundel, 835.

C.

Chewton v. Compton Martin, 783.
Cirencester v. Coln St. Aldwin's, 915.
Claveley and Burton, cases of, 23.
Clerkenwell v. Bridewell, 517.
Clypton v. Ravistock, 779.
Cold Ashton v. Woodchester, 253.
Coombe v. Westwoodhey, 353.
Cowred's case, 33.
Coxwell v. Shillingford, 37.
Cripplegate v. St. Saviour's, 27.
Croft v. Gainsford, 194.
Crompton v. Bearcroft, 95.
Cunmer v. Milton, 26.

D.

Darlington v. Hemlington, 16.
Dean, Forest of, v. Linton, 777.
Dumbleton v. Beckford, 56.
Dunsford v. Ridgwick, 364.

E.

Eardisland v. Leominster, 370.
Eastland v. Westhorsley, 426.
Eastwoodhey v. Westwoodhey, 57.
Egburn v. Hartly-wintly, 847.

Elsing v. Hereford, 10.
Elsted v. Hollibourne, 165.
Evelyn v. Rentcomb, 125.

F.

Farringdon v. Witty, 416.
Feversham v. Gravenny, 390.
Fittleworth v. Pulborough, 252.
Forest of Dean v. Linton, 777.

G.

Gatton v. Milwich, 232.
Goring v. Moltsworth, 396.
Gratwich v. Shenston, 214.
Great Bedwin v. Wilcot, 813.
Greenwich v. Longdon, 398.
Gregory, Stoke, v. Pitminster, 269.

H.

Hanmer v. Ellesmere, 369.
Hard's case, 34.
Harrison v. Lewis, 728.
Harrow v. Edgeware, 608.
——— v. Ryslip, 910.
Hawkin v. Eastbrooke, 433. *n.*
Helsington v. Over, 243.
Henley v. Chesham, 96.
Hobey v. Kingsbury, 851.
Holy Trinity v. Garsington, 235.
——— v. Shoreditch, 554.
Honiton v. St. Mary-Axe, 741. *n.*
——— v. South Beverton, 909.
Horner v. Liddiard, 97. *n.*
Horsham v. Henfield, 809.
——— v. Shipley, 340.

I.

Ivinghoe v. Stonebridge, 682.

K.

Kingston Bowsey, case of, 915. *n.*
Kinver v. Stone, 126.
Kniveton v. Tissington, 198.

L.

Little Kire v. Woodfall, 729.
Little Tew v. Duns Tew, 168.
Lowess v. Lanstephen, 404.
Llandrerras v. Northop, 199. 678. *n.*

M.

Macclesfield v. Lethfrith, 802.
Mardenbradley v. Wallingford, 1013.
Malden v. Fletwick, 839.
Mann v. Davers, 888.
Marden v. Barham, 197.
Masters v. Child, 5.
Mayhew v. Parker, 967.
Milbrook v. St. John's, 955.
Missenden v. Chesham, 258.
——— v. Grimsfield, 518.
Morris v. Miller, 94.
Mungerhunger v. Warden, 817. 914.
Mursley v. Grandborough, 609.

N.

New Windsor v. White Waltham, 731.
Newby v. Wiltshire, 436. *n.*
North Nibley v. Wootton-under-Edge, 163.
Notton v. Roystone, 564.

O.

Oakham v. Whittlesea, 840.

P.

Pancras v. Rumbold, 781.
Pawlet v. Burnham, 424.
Peak v. Bourn, 236.
Pepperharrow v. Frencham, 341.
Peter Church v. All Saints, 499.

R.

Rex v. Abergwilly, 488. 832.
Ackley, 349.
Adson, 382.
Aldborough, 178.
Alfreton, 596.
Allcannings, 242.
Allendale, 261. 421.
All Saints, Cambridge, 156.
All Saints, Derby, 155.
All Saints, Worcester, 304.
Almanbury, 942.
Alnwick, 972.
Althorne, 336.
Alton, 317.
Alveley, 695.
Amlwch, 256. 866.
Amner, 927.

Rex v. Andover, 801.
Angell, 884.
Apethorpe, 412.
Arlington, 330.
Arundel, 516.
Ashby de la Zouch, 582.
Ashton, 388.
Ashton-under-Lyne, 184.
Astley, 17.
Aston, 211.
Aston Keynes, 714.
Atherton, 360.
Atkinson, 1026. *n.*
Austrey, 542. 561.
Aynhoe, 368.
Aythorp Rooding, 104.
Aythrop Rooding, 616.

Bagworth, 378. 823.
Banbury, 774.
Bank Newton, 259.
Bardwell, 160.
Barleston, 583.
Barmby-in-the-Marsh, 530.
Barnsley, 580.
Barton-upon-Irwell, 475.
Barton Turfe, 52.
Bath Easton, 296. 403
Batheaston, 747.
Battains, 1027. *n.*
Beaulieu, 265.
Beccles, 415.
Bedwick, 859.
Benjoe, 668, *n.*
Benneworth, 161.
Bentley, 919.
Berkeswell, 85.
Berkswell, 659.
Berwick St. John's, 290.
Bilborough, 282.
Billingshurst, 100.
Bilsdale Kirkham, 202.
Bilton, 707.
Binegar, 905.
Birdbrooke, 320.
Birdham, 757.
Birmingham, 314. 700.
Bishop's Hatfield, 307.
Bishopside, 587. 736.
Bishopswalton, 912.
Bitton, 624.
Bleasby, 81.
Bolton, 709.
Bond, 922.
Bottesford, 286.

Rex v. Bow, 255. 581.
Bowness, 183.
Bradenham, 918. 990.
Bradford, 877.
Bradley Field, 373. 377.
Bradninch, 293. 570.
Bradstone, 573.
Bramley, 998.
Brampton, 99. 138. 444.
Bray, 440. 476. 735. 993.
Brighthelmstone, 529.
Brighton, 186.
Broadhembury, 66.
Brotton, 537.
Brungwyn, 625.
Bubwith, 152.
Buckingham, 716.
Buckinghamshire, 950.
Buckland Denham, 311.
Bucklebury, 43. 824. 856.
Burbach, 513.
Burcott, 941.
Burgh, 995.
Burton Bradstock, 525.
Burton-upon-Trent, 101.
Bury, 825.
Butley, 128.
Butterton, 641.
Byker, 362.

Calow, 653.
Carleton, 113.
Carmarthen, 971.
Carnarvon, 1008.
Carshalton, 218.
Castell Careinion, 1034.
Castlechurch, 430.
Castle Morton, 212. 1040.
Castleton, 526. 603.
Catesby, 727.
Catherington, 638.
Caton, 680.
Catterall, 908.
Caversham, 162.
Caverswall, 372. 434.
Chadderton, 830.
Chagford, 881.
Chailey, 671.
Charles, 565.
Charlton, 633.
Chatham, 833.
Chediston, 192.
Chelmsford, 536.
Cherry Willingham, 159.
Chertsey, 299.

Rex v. Cheshunt, 187.
Chew Magna, 631. *n.*
Cluck, 527.
Chillesford, 266.
Chilvers Coton, 789. 903.
Chipping Farringdon, 889.
Chipping Norton, 147.
Chipping Warden, 550.
Christchurch, 436.
Christowe, 579.
Christ's Parish, 285.
Cirencester, 521.
Clapham, 559.
Clare, 295.
Claveley and Burton, 23.
Clayhydon, 459.
Clayton-le-Moors, 705.
Clent, 417.
Clifton, 38. 725.
Clisthydon, 586.
Cold Ashton, 61. 617. 685.
Cole, 886.
Collingbourn Ducis, 70. 262.
Colliton, 923.
Coln St. Aldwin's, 821.
Coltishall, 322.
Corsham, 467. 906.
Cowhoneyborne, 77.
Cowred, 33.
Crayford, 229.
Crediton, 576.
Creech St. Michael's, 28. 1030.
Croft, 189.
Cromford, 510.
Croscombe, 399.
Cuckfield, 925.
Culmstock, 177.
Cunmer, 36.

Darley Abbey, 151.
Darlington, 655. 742.
Dawlish, 385.
Debenham, 772.
Deddington, 684.
Dedham, 292.
Denbigh, 148.
Denham, 410.
Dersingham, 141.
Devereaux, 90.
Devonshire, 961.
Diddlebury, 697. 907.
Ditchingham, 505.
Dodderhill, 142. 331.
Donington, 171.
Dorstone, 679.

Rex v. Dunchurch, 668.
Dunton, 281.

Eakring, 541.
Ealing, 897.
Eatington, 639.
Eaton, 429. 1021. *n.*
East Bridgeford, 557.
East Donyland, 959.
East Ilsley, 402.
East Kennett, 452.
East Knoyle, 598.
East Shefford, 460.
Ecclesal Bierlow, 544.
Eccleston, 325.
Edgeworth, 68. 1016.
Edgmond, 335.
Edington, 648.
Edmonton, 97.
Egremont, 771 *a.*
Eldersley, 389.
Ellesfield, 375.
Elstack, 298.
Eltham, 122.
Elvet, 150.
Empingham, 313.
Enborne, 92.
Englefield, 880.
Eriswell, 828.
Erith, 1035.
Essex, 970. 1017.
Everton, 75.
Everdon, 878.

Farringdon, 719.
Ferrybridge, 831.
Ferry Frystone, 487.
Fetherton, 820.
Fifehead Magdalen, 371.
Fillongley, 386. 887. 901.
Findern, 740. 756.
Findon, 413.
Fleet, 500.
Flintshire, 966.
Framlingham, 201. 690.
Frampton-upon-Severn, 754.
Fremington, 560.
Friendsbury, 401.
Fritwell, 225.
Frome Selwood, 437.

Garway, 623.
Geddington, 661.
Glamorganshire, 1027.
Gloucestershire, 947. 962.

Rex v. Goodnestone, 431.
Graffham, 808.
Grantham, 458.
Gravesend, 778.
Great Bedwin, 934.
Great Bookham, 407. *n.*
Great Chart, 1015.
Great Chilton, 383.
Great Clacton, 32.
Great Farringdon, 642.
Great Wigston, 553.
Great Yarmouth, 303. 694.
Grendon Underwood, 380.
Gresham, 453.
Grey, 8.
Grince, 974.
Gudridge, 939.
Gwenop, 692.

Hackney, 836.
Haddenham, 649.
Hagworthingham, 660.
Hales, 485.
Halifax, 63.
Hall, 883.
Hallow, 478.
Hambledon 251.
Hammersmith, 140.
Hammond, 233.
Hampreston 301.
Hampthill, 704.
Hampton, 595. 744.
Hamstall Redware, 503.
Hanbury, 326. 419. 433.
Hanley, 1025.
Harberton, 547. 1038.
Hard, 34.
Hardhorn-with-Newton, 472.
Hardingham, 422.
Hardwick, 78. 82.
Hareley, 811.
Harman, 1023.
Harringworth, 607.
Harrowby, 976.
Harrow-on-the-Hill, 933.
Hartfield, 924. 940.
Harwood, 347.
Hasfield, 613. 678. *n.*
Haughton, 367.
Hayder, 717.
Headcorn, 88. 734.
Heath, 762.
Heaton, 30. *n.*
Hedingham Sible, 978.
Hedsor, 119. 405.

Rex v. Hellingley, 207.
Hensingham, 117. 260.
Heptenstall, 869. 977.
Herefordshire, 964.
Higher Walton, 112.
Highnam, 501.
Hilton, 13.
Hinckley, 593.
Hinderclave, 956.
Hindringham, 548.
Hinxworth, 115. 895.
Hitcham, 309. 991.
Hoddesdon, 356. *n.*
Hodnett, 98.
Holbeck, 599.
Holbeck in Leeds, 864.
Hollington, 146.
Holm E. W. Quarter, 650. 699.
Holy Cross Westgate, 250.
Holy Trinity, Minories, 574.
Holy Trinity, Wareham, 481.
Honiton, 854.
Hooe, 216.
Hope Mansell, 244.
Hornchurch, 657.
Horndon-on-the-Hill, 654.
Horsley, 646, 737.
Horwich, 279.
Houghton-le-Spring, 284, 678.
Houlditch, 1024.
Howarth, 822.
Huggate, 80.
Hulland, 406.
Huntingdonshire, 948.

Icleford, 9.
Ideford, 567.
Idle, 21.
Ilam, 356.
Ilkeston, 538.
Ilmington, 622.
Ilminster, 247.
Ingleton, 621.
Ingworth, 73. 764.
Inman, 566. *n.*
Inskip-with-Sowerby, 814.
Ipsley, 15. 738.
Ironacton, 40. 111.
Islip, 425.
Iveston, 407
Ivinghoe, 414.

Jackson, 827.
Johnson, 837.
Jukes, 1028.

Rex v. Kea, 1036.
Keel, 755.
Kelstern, 185.
Kenardington, 230.
Kenilworth, 455. 900.
Kidderminster, 804.
Kilby, 515.
King's Langley, 973.
King's Norton, 305.
King's Pyon, 468.
Kingston Bowsey, 915. *n.*
Kingswinford, 319.
Kingswood, 689.
Kirkby Stephen, 894.
Knaptoft, 1042.
Knighton, 222.
Kynaston, 876.

Ladock, 397.
Laindon, 507. 605.
Lakenheath, 157.
Lambeth, 332.
Lampeter, 882.
Langham, 546. 569.
Leeds, 123. 219. 619.
Leek Wootton, 749.
Leicestershire, 1006.
Leigh, 116. 471. 895. *n.* 920.
Leverington, 935.
Lidney, 358.
Lillington, 724.
Little Bolton, 316.
Liverpool, 245. 254.
Llanbedergoch, 224. 999.
Llanrhydd, 893.
Llantillio Grossenny, 668.
Llanwinio, 787. 996.
Lockerley, 137. *n.*
Londonthorpe, 144. *n.* 206.
Long Whalton, 484.
Long Wittenham, 55. 686.
Lopen, 635.
Lowess, 220.
Lowther, 344.
Lubbenham, 18. 741.
Luffington, 86.
Lydd, 338.
Lyth, 483.

Macclesfield, 300. 308.
Maddington, 438.
Madeley, 800.
Maghull, 203.
Maidstone, 474.
Malden, 959. *n.*

Rex v. Margam, 718. 1003.
Margram, 506.
Market Bosworth, 479.
Marlborough, 423.
Martham, 323.
Martley, 645. 988.
Marwood, 615.
Mathon, 19. 746.
Mattingley, 669.
Mellingham, 492.
Mellor, 144.
Mereval, 784.
Mersham, 249.
Metheringham, 1032.
Middleham, 842.
Middlesex, 1009.
Middlezoy, 602.
Milbourne, 239.
Mildenhall, 411. 473.
Milton, 1007.
Milverton, 928.
Milwich, 306.
Minster, 182.
Minworth, 145.
Mitcham, 329.
Monks Risborough, 954.
Monmouthshire, 1010.
Moor Critchell, 790. 1005.
Morley, 769.
Mortlake, 766.
Morton, 606.
Mountsorrell, 514. 551.
Mursley, 357.

Navestock, 345.
Nether Heyford, 435.
Netherseal, 175.
Netherthong, 773.
New Forest, 263.
Newington, 760. 807.
Newstead, 343.
Newton, 342. 841.
Newton Toney, 318.
Nicholls, 1027. *n.*
Norfolk, 938.
Northampton, 936.
North Basham, 451.
North Bedburn, 133.
North Collingham, 190.
North Cray, 450.
North Curry, 631.
North Duffield, 154.
North Nibley, 321.
North Petherton, 1044.
Northowram, 494.

Rex v. Northweald Bassett, 662.
Norton, 109. *n.* 264. 957.
Nottingham, 1011.
Nuneham Courtney, 486. 829.
Nutley, 480. 994.
Nympsfield, 405. *n.*

Oakley, 647.
Oakmere, 794.
Old Alresford, 135.
Olney, 672.
Offchurch, 67. 636.
Offerton, 566.
Osgathorpe, 917.
Oswell, 926.
Oulton, 53. 798. 987.
Over, 324.
Overnorton, 280.
Overton, 363.
Owersby-le-Moor, 648.
Ozleworth, 432. 695. *n.*

Page, 992.
Painswick, 627.
Pendleton, 1039.
Penryn, 702.
Petham, 585. 732.
Pickersgill, 1026.
Piddletrenthide, 137.
Polesworth, 337. 477.
Polstead, 980.
Potter Heigham, 442.
Preston, 89. 428. 932.
Pucklechurch, 327.
Purley, 209.

Rainham, 509. 997.
Ribchester, 534.
Richmond, 443.
Rickinghall, 276.
Ringwood, 210.
Ringwould, 874.
Ripon, 511.
Riton, 855.
Roach, 72.
Rockvill, 845.
Ross, 374. 441.
Rotherfield Greys, 84.
Rudgely, 121. 904.
Rushall, 470.
Rushulme, 278.
Ryton, 114. 771.

St. Agnes', 310. 439.

Rex v. St. Andrew's, Holborn, 408. 457. 921.
St. Bartholomew, Cornhill, 445.
St. Botolph's, 41. 109.
St. Dunstan, 213.
St. Ebb's, 361.
St. George, Hanover-square, 130. 556.
St. George the Martyr, 226.
St. Giles's-in-the-Fields, 50. 131.
St. Giles's, Reading, 376. 420.
St. Helen's, 600.
St. Helen, Stonegate, 578.
St. Ives, 711.
St. James's, Bury St. Ed. 698.
St. John, Glastonbury, 188.
St. Lawrence, Ludlow, 703.
St. Margaret, Fish-street, 170.
St. Margaret's, Leicester, 726.
St. Margaret's, Lynn, 339.
St. Martin-at-Oak, 750.
St. Mary, Bredin, 535.
St. Mary, Bury St. Ed. 1041.
St. Mary, Cardigan, 45.
St. Mary, Guildford, 273.
St. Mary Kallendar, 540.
St. Mary, Kidwelly, 387.
St. Mary, Lambeth, 227. 465. 571. 902.
St. Mary-le-Bone, 228. 879.
St. Mary, Leicester, 791.
St. Mary Magdalen, 1033.
St. Mary Ottery, 846.
St. Mary, Westport, 698. 720.
St. Mary, Whitechapel, 665.
St. Matthew's, Bethnal Green, 54. 498.
St. Matthew, Ipswich, 274.
St. Maurice, 770.
St. Michael's, Bath, 173. 601. 629.
St. Michael's, Coventry, 179. 761.
St. Michael, Ipswich, 975.
St. Nicholas, Harwich, 712.
St. Nicholas, Leicester, 22.
St. Nicholas, Nottingham, 502.
St. Nyotts, 676.
St. Olave's Jewry, 519.
St. Pancras, 193. *n.*
St. Paul's, Bedford, 575. 604.
St. Paul, Deptford, 208.
St. Peter & St. Paul, Bath, 691.
St. Peter's, Derby, 592. 758.
St. Peter's, Dorchester, 291.
St. Peter, Mancroft, 466.

Shackford v. Northbovey, 806.
Sheen v. Godalming, 427.
Simonburn v. Melkridge, 205.
Skeffreth v. Walford, 11.
South Cadbury v. Braddon, 985. 1001.
South Cerney v. Coltsbourn, 355.
South Sydenham v. Lamerton, 164. 193.
Southell v. Needwell, 868.
Southwold v. Yokeford, 195.
Spalding v. St. John Baptist, 805.
Spitalfields v. Bromley, 890.
Stallingburgh v. Haxhay, 848.
Staunton-under-Bardon v. Ulescroft, 215.
Stoke Fleming v. Berry Pomroy, 523.
Suckley v. Whitborn, 3.
Suddlecomb v. Burwash, 838.

T.

Teelby v. Willerton, 850.
Tewkesbury v. Twining, 2.
Thackham v. Findon, 911.
Trowbridge v. Weston, 834.
Tynton v. King's Norton, 49.

U.

Ufculm v. Clisthydon, 853.

W.

Walton v. Chesterfield, 775.
Wandsworth v. Putney, 288.
Wangford v. Brandon, 46.
Ware v. Stanstead, 816.
Westbury v. Coston, 7.
Weston v. Kirton, 196.
Weston Rivers v. St. Peter's, 803.
Whitechapel v. Stepney, 1. 24.
Wichford v. Bretford, 365.
Wingham v. Sellindge, 238.
Wookey v. Hinton Blewett, 674.

THE

POOR LAWS.

CHAPTER I.

SETTLEMENT BY BIRTH.

I. *Of illegitimate Children.*
II. *Of legitimate Children.*

I. *Settlement of Bastards.*

See stats. 13 *G.* 2. *c.* 29. 17 *G.* 2. *c.* 5. § 25. 13 *G.* 3. *c.* 82. § 5. 20 *G.* 3. *c.* 36. 33 *G.* 3. *c.* 54. § 25. 35 *G.* 3. *c.* 101. § 6. 49 *G.* 3. *c.* 68.

1. *WHITECHAPEL* v. *Stepney*, *E. T.* 1 *W.* 3. *Carth.* 438.— Two children were privately dropped in the parish of *S.*, and removed to *W.* as being the place of their birth. It was agreed by all the judges that the place of the *birth* of a *bastard child* is the place of its settlement, for it gains a settlement in such place *ex necessitate*; for, being *nullius filius*, it cannot otherwise be provided for, except a *reputed father* can be found.

A bastard child is, *ex necessitate*, settled where born.

Holt, 509. Comb. 364. Salk. 427. 485. 1 Ld. Ray. 567.

2. *Tewkesbury* v. *Twining*, *Bulst.* 349.— An unmarried servant girl, dwelling in the parish of *T.*, being with child and near the time of her delivery, was conveyed, *by practice*, out of the parish of *L.* into a hovel or out-house situated in the outermost confines of the adjoining parish of *Tewkesbury*, where the child was born. The question was, Which of these two parishes was to keep the child?— Sir William Jones held, that illegitimate children must be kept by the parish in which they are born; but that if any improper practice appear, then this rule fails, and the child shall be kept and provided for by the parish where the mother dwelt, and where she was got with child, and which had used the practice to have the child born in another parish: and so he ordered, in this case, (the practice being very apparent,) that the child should be settled in and kept and provided for by the parish of *L.*

But if any *fraud* be used to occasion *the birth* of *a bastard*, in any particular parish, such child shall be settled, not where *born*, but in the parish from whence its mother was fraudulently and collusively removed.

Cases of Sett. & Rem. 66.

3. *Suckley* v. *Whitborn*, 2 *Bulst.* 358.— It was resolved in this case by Sir William Jones, that if a woman big with child be sent to the house of correction, and be there delivered of a bastard, the child shall be sent to that *parish from which* the mother was

A *bastard child* born in *a house of correction* is not settled in the parish where

such house is situated, but in its mother's parish.—See also the 20 G. 3. c. 36. § 2.

sent to the house of correction, to be there kept and provided for; this being the place where she was last settled.

If an unmarried woman big with child be removed, and, *pending an appeal* against such order of removal, be delivered of a *bastard child*, such child is not settled where *born*, if such order be afterwards quashed, but in the parish from which its mother was so removed.

4. *Boreham* v. *Waltham*, *H. T.* 8 *W.* 3. *Carth.* 397. — An unmarried woman, being big with child, was, by an order of two justices, removed from *W.* to *B.*, as to her last place of settlement, and from which order *B.* appealed; but before the next Sessions she was delivered of this *bastard child* at *B.* Afterwards the order of the two justices was vacated upon the appeal; and the woman with her child was sent back to the parish of *W.* Two justices then made a new order, by which this *bastard child* only was sent to *B.* because it was born there. — THE COURT: The child ought to follow the mother in this case; because the parish officers of *B.* could not remove the woman until the appeal was determined: so that they had no means of preventing the birth of the child in their parish. S. C. Salk. 121. 474. 532. 6 Mod. 213. 2 Bulstr. 349. Comb. 285. 5 Mod. 204.

But if an unmarried woman with child come accidentally into one parish and remove to another by the advice of some of the parishioners, and is there delivered, the *bastard* shall be settled where born.

5. *Masters* v. *Child*, *H. T.* 10 *W.* 3. 3 *Salk.* 66. — It was ruled in this case that the birth of a bastard child, *primâ facie*, settles it in the place where it was born; but that if a woman, big with child of a bastard, and settled in *one parish*, is persuaded by *the parish officers* to go into *another parish* on purpose to be there delivered, this fraud will make the parish chargeable where the mother was settled, though the child was not born there. But if a woman with child of a bastard come *accidentally* into one parish, and is persuaded by some of the parishioners to go into another parish, and is there delivered, this shall not charge that parish which persuaded her.

The bastard children of *lodgers* are settled where born.

1 Bl. Com. 362.

6. *Rex* v. *Spitalfields*, *E. T.* 12 *W.* 3. *Ld. Raym.* 567. — An infant born in the parish of *St. A.*, was nursed in *S.*; the father died, and the mother ran away; they had neither of them a settlement in *St. A.*'s, but were only *lodgers* there. Two justices removed the child from *S.* to the parish of *St. A.*, as being the place of its birth. Upon appeal to the Sessions the order was quashed, the justices being of opinion that bastards did not gain a settlement by their birth. Upon motion in the King's Bench the order of Sessions was quashed, because a child ought to be maintained where it is born, until it gains another settlement, and that therefore it is incumbent upon the parish where it is born to find another place of settlement.

If a woman be unjustly removed from one parish, and be delivered of a bastard in the other parish, pending the order, though before appeal, such bastard, on the order being reversed, is not settled where *born*.

7. *Westbury* v. *Coston*, *H. T.* 2 *Ann.* 2 *Salk.* 532. — A woman big with child was removed by order of the justices from *W.* to *C.*, and pending the order before the next Sessions she was delivered of a bastard child. The parish of *C.* appealed against this order of removal, and the order of the two justices was thereupon reversed; but by another order of two justices the child was sent back to *C.*, as to the place of its birth. On an appeal against this order it was confirmed. But all the proceedings were removed into the King's Bench; and, BY THE COURT, Although here is no fraud, yet the removal was wrongful, and the subsequent reversal of the order makes all void *ab initio*. Fraud or not fraud is not material in this case; but the settlement of the

child depends upon the removal, for if that was wrong, they shall not ease themselves by it.

8. *Rex* v. *Jane Grey*, *E. T.* 10 *Ann. Sett. & Rem.* 41. — It was resolved BY THE COURT in this case, concerning the settlement of a *bastard child*, that if the parish-officers are carrying a pregnant woman from one place to another by virtue of an order of removal, and she is delivered on the road, *in transitu*, of a bastard child, such bastard is not settled in the parish where born, but shall go with the mother to the parish where she is going by virtue of the order.

A bastard born on the road *in transitu*, under an order of removal is not settled where born.

9. *Rex* v. *Icleford*, *M. T.* 10 *Ann.* 1 *Sess. Cases*, 32. — A woman, who was an inhabitant of the parish of *I.*, being with child of a bastard, went to the parish of *G. M.* to get some necessaries from her relations. The parish officers of *G. M.* procured an order from two justices to send her to *I.*, but, the waters being out, before they could send her to *I.*, she was brought to bed in the parish of *G. M.* of a *bastard child*. — THE COURT held, though generally a bastard is settled where it is born, yet in such a case as this, *where there is an order to remove the mother before she was delivered*, the child shall be an inhabitant of *I.*; for if a woman with child of a bastard be sent by order from *A.* to *B.* and she is brought to bed at *B.*, and then the order is quashed, the child shall be sent back to *A.* with its mother.

A bastard born after an order of removal is made out, but before actual removal, is not, by such birth, settled where born, but shall go to the mother's parish.

See 35 G. 3. c. 101. § 6. 2 Bulstr. 349. Salk. 474. 532. Stra. 476. Sett. & Rem. 192. 314.

10. *Elsing* v. *The County of Hereford*, *H. T.* 2 *G.* 1. 1 *Sess. Cas.* 99. — A BASTARD was born in the *county gaol*. The question was, Whether the settlement of the child should be in the parish where the mother had a settlement, or in the parish where THE GOAL was situated? — THE CHIEF JUSTICE: It has been held, that people in the *house of correction* (*a*) ought to be considered as inhabitants of the place they were of before, for they are put there only for safe custody; for the gaol of a county is, with respect to settlements, constructively situated in every part of the county, and a bastard child born in such gaol is not settled in the parish where the gaol is locally situated, but in the parish in which its mother was last legally settled when she was sent to gaol.

A bastard born, in a *county gaol*, where the mother had been committed for safe custody, is not settled where born.

S. C. 10 Mod. 334.

(*a*) See Suckley v. Whitborn, *ante*, pl. 3.

11. *Skeffreth* v. *Walford*, *M. T.* 3 *G.* 2. 2 *Sess. Cases*, 89. — Two justices of the peace made an order to remove a woman and her child from *S.* to *W.*, and by that order sent the child, being two years old, to the place of its birth, at a distance from the mother. This order was confirmed at the Sessions on the appeal; and being removed by *certiorari*, it was moved to quash both the orders, because the child was removed to the place of its birth, but the justices do not adjudge it to be *a bastard*, and being *a nurse child*, they cannot separate it from the mother by reason of the care necessary to nurture so very young a child, which none can be supposed so fit to administer as the mother of it; and therefore it should have been sent with her to the place of her settlement. — The orders were quashed.

But although the place of *birth* be the place of settlement of a *bastard*, yet, while under *seven years of age*, it shall be removed for *nurture* to the mother's settlement.

12. *Rex* v. *St. Peter's in Worcestershire*, *E. T.* 8 *G.* 2. *Burr. S. C.* 25. — A BASTARD was removed from *St. P.* to *O. S.* as to the place of its *birth*. It appeared *on the evidence of the father of this child*, that he and its mother had travelled together as wandering persons from place to place for about fifteen years, and during all that time had cohabited and lain *together as* man and wife; that

A bastard though its parents were, during life, reputed man and wife, is settled where born.

during this cohabitation, which continued till the mother's death, the child was born; that the marriage of the parties had never been questioned during her life; and that this child, among other children which they had, was baptized as the legitimate child of the said father and mother. The Sessions conceived that this child was settled with its parents; but by LORD HARDWICKE, This man and woman were never married, and the evidence of the man was admissible to prove this fact. (*a*) The child, therefore, is a bastard, and must be settled where born.

The illegitimate children of a woman who is certificated from another parish shall be settled where born, although such certificate was in force at the time of their birth.

13. *Rex* v. *Hilton*, *T. T.* 16 *G.* 2. *Burr. S. C.* 187.—The bastard child of a certificated woman was removed from *L.*, where it was born while the certificate was in force, to *H.*, which was the place of its mother's settlement. It was objected, that the bastard's settlement was in *L.*, the parish where it was *born*, and that it could not be sent to the place which gave the certificate, as a legitimate child might have been. On the other side it was contended, that *partus sequitur ventrem*, and that the certificate act made no difference between *legitimate* and *illegitimate* children.—LEE C. J. This case seems to depend entirely on the statute 8 & 9 *W.* 3. *c.* 30., which obliges the parish to receive a certificated person with his or her family and children, and to suffer them to continue there till actually chargeable; for *then*, indeed, a certificated person and his children, though *born* in the parish, may be removed. But bastard children cannot be considered as the children of the certificated person: they are nobody's children; they are *filii populi*. In the case of *New Windsor* (*b*) the Court were of the same opinion; but as the parish of *White Waltham* had certified that the mother was the *wife* of the father of the children, it was thought that such certificate concluded the parish, and prevented them from proving the contrary. I know of no case that considers bastards as the children of any one, and therefore I think that a *bastard* cannot be removed from the place where it is born under a notion of its being *the child* of a certificated person. — CHAPPLE J. concurred, and said, that the words "*family*" and "*children*," in the certificate act, must mean *legitimate children*; so that *bastards* are not even within the words of the act. — WRIGHT J. said, that in this case *partus non sequitur ventrem*, and therefore a bastard is, in general, settled where born. — And DENNISON J. being of the same opinion, the order, removing the bastard to the mother's settlement, was quashed.

8. C. Stra. 1168. 2 Sess. Cas. 170. See Rex v. Mathon, *post*, pl. 19.

(*b*) 1 Str. 186.

See 35 G. 3. c. 101. and Rex v. Yarmouth, 8 T. R. 68.

The bastard child of a certificated woman who is then pregnant, is settled where *born*, although the certificate undertakes to provide for *her* and *her child*.

14. *Rex* v. *Wyke*, *T. T.* 19 & 20 *G.* 2. *Burr. S. C.* 264. — *S. C.* the mother of *J. C.* the pauper, came from *S.* to *H.* by *certificate*, being then pregnant with a bastard child (the said *J. C.*), and was afterwards delivered of him at *H.* The certificate undertook that the parish of *S.* should provide for her and *her child*, whenever they should become chargeable. It was contended, that this case was clearly distinguishable from the case of *Rex* v. *Hilton* (*c*); for here the woman is stated to be then pregnant, and the certificate expressly undertakes to provide for her and her child. — THE COURT said, that they took the child referred to in the certificate to be a legitimate child then in being: and therefore the order, removing this bastard from the parish where it was born to the parish where its mother was settled, was quashed.

(*c*) *Ante*, pl. 13.

(*a*) See Henley v. Chesham, *post*, 508., and Standen v. Standen. Peakes, pl. 96. Rex v. Stockland. Burr. S. C. N. P. 32. accord.

15. *Rex* v. *Ipsley*, *M. T.* 10 *G.* 3. *Burr. S. C.* 650. — A woman was certificated from *Studley* to *Ipsley* in the following words: "To the churchwardens and overseers of the poor of the "*I.*: We the churchwardens and overseers of the poor of the "parish of *S.* do hereby certify, own, and acknowledge *A. C.* "spinster, and the child or children that she now goeth with, to "be our inhabitants, legally settled with us in our said parish of "*S.*: and if at any time hereafter the said *A. C.*, or her child or "children which she now goeth with, shall become chargeable to "and ask relief of your said parish of *I.*, we the said church-"wardens and overseers of the poor of our said parish of *S.* do "hereby promise for ourselves and successors, that we will, when "requested by any of you, receive, relieve, and provide for them, "as our inhabitants, according as the law in that case requires." The child was born at *I.*, within about a month after she came to reside there under the certificate. It was argued, that the certificate in this case could not operate as to the unborn child, but that the child was notwithstanding settled in the place where it was born: that this was not a certificate within the act of 8 & 9 *W. c.* 30. The undertaking related to a nonentity, and embryo. An unborn child cannot be personally certificated. It is no part of the parent's family. And the act obliges only the certifying parish to provide for the pauper mentioned in the certificate, together with *his or her family*; and a bastard, in the sense of the act, is part of no person's family. — But THE COURT were clearly of opinion, that the parish of *S.* was bound by this certificate, which takes notice of the woman's being then unmarried and with child; and acknowledges the child she then went with to be legally settled with them in their parish. And LORD MANSFIELD observed, that the woman was very big with child; and was understood by both parishes to be so. And *S.* expressly promised to provide for the infant she then went with; therefore they ought to be bound by their certificate. (*a*) An infant *in ventre sa mere* may be, to a variety of purposes, considered as born.

But if a certificate expressly undertake to provide for a child that a woman is then pregnant with; such child, though born a *bastard*, shall be settled in the mother's parish, and not in the parish where it is *born*.

(*a*) See New Windsor *v.* White Waltham, 1 Str. 186. accord.

16. *Darlington* v. *Hemlington*, *H. T.* 17 *G.* 3. EDITOR'S *MSS.* —*E. G.* went with a certificate from *H.* to *D.*, in which last township she had two bastard children, and then became chargeable. An order being thereupon made for the removal of her to *H.*, and she took the two children who were *born* in *D.* with her, they being both under the age of seven years. Two justices made an order upon the township of *D.* for the *maintenance* of the two children born in that township. *D.* appealed against the order of maintenance, and the Sessions being of opinion that *D.* was not liable, quashed the said order. But the proceedings being removed, THE COURT were of opinion, that *D.* was obliged to maintain the two children at *H.*, while residing there with their mother as *nurse children*; and therefore quashed the order of Sessions, and affirmed the order of the two justices.

A *bastard* removed as a *nurse child* to its mother's settlement shall be there maintained by the parish in which it was *born*.

S. C. Dougl. 9. Cald. 6.

17. *Rex* v. *Astley*, *H. T.* 25 *G.* 3. EDITOR'S *MSS.* — *C. B.*, the natural daughter of *Ellen*, now the wife of *J. H.*, was removed from the township of *A.* to the township of *L. H.* THE SESSIONS quashed the order and stated, "That the pauper was born a "bastard in *L. H.*, on the seventh of *August* 1782, under the "following circumstances: The mother, on the fifth of the same "month of *August*, *went, as she had several times* done before,

A bastard born on the road, while the mother is endeavouring to reach her own parish, without fraud, is settled where born.

S. C. Cald. 559. "with the knowledge, consent, and approbation of the overseers "of *A.*, where her legal settlement was, and where she then re- "sided, to find out the father of the child, that she might give "intelligence of him to the town. She told the overseers of *A.*, "two or three days before she was delivered, that she would go "to find out the father of the child, and they desired she would "if she had opportunity; but she then thought she was not within "three weeks of her time. She went to *R.*, about eight complete "miles from *H.*, supposing to find the father there, and stayed "all night; and the next day, while she was at *R.*, she perceived "herself to be ill, and therefore made what haste she could to "return home, wishing to get to her own town. She got to *F.* "on the sixth of *August* at night; and about two or three o'clock "next morning, being the seventh, she set out for *A.*, and got to "*L. H.*, which was the direct road to *A.*, where, her labour- "pains increasing, she was furnished with a man and horse, at "her own request, by a person (not the overseer) of *L. H.*, to "carry her forward to *A.*; but she had not proceeded more than "thirty roods before her pain was so great that she was obliged "to stop, and was delivered of the pauper in *L. H.*, in the high- "way there, and about one hundred yards from a township inter- "vening between *A.* and *L. H.* She and her child were imme- "diately taken to a house in *L. H.*, where they were both taken "care of by the town with humanity and tenderness: there was "no fraud on either side." — LORD MANSFIELD: Where a bastard is born pending an order, or in gaol, or there is any fraud, these are exceptions to the general rule; but in all other cases the birth decides the settlement. — Order quashed.

If a child be born under a marriage in fact, and it appears, by fair conclusion, that it is a *bastard*, he shall be settled where *born*.

18. *Rex* v. *Lubbenham*, *E. T.* 31 *G.* 3. 4 *T. R.* 251. — Two justices removed *Elizabeth Hutchins*, the wife of *Thomas Hutchins*, (who was then absent from her,) and *Hepziba* her daughter, from *L.* to *O.* On appeal the Sessions quashed the order, and stated the following case: "The pauper *Elizabeth* was married about seventeen years ago to "*Thomas Hutchins*, who was settled at *O.* Two years afterwards "he was convicted of a highway robbery, and condemned, but "reprieved on his inlisting as a soldier: he went abroad; and "five years after that the said *Elizabeth* (hearing that he was dead) "was married by banns to *Thomas Ponton* at *L.* On the 21st day "of *October* 1782, about a twelvemonth after, *Hutchins* returned "(whilst the said *Thomas Ponton* and *Elizabeth* were residing at "*T.*). The said *Ponton* and *Elizabeth*, who were then living "together as man and wife, went together to the parish-officers of "*L.* for a certificate to *T.*, who directed the said *Ponton* and the "said *Elizabeth* to be included in the said certificate, and granted "it accordingly; acknowledging the said *Thomas Ponton* and his "wife (without mentioning her christian name) to be their parish- "oners legally settled in the said parish of *L.*; and they the said "pauper, *Elizabeth* and *Ponton* returned with it to *T.* *Thomas* "*Ponton* was never married to any person but the said *Elizabeth*. "*Hepziba* was born during the cohabitation of *Ponton* and *Eliza-* "*beth* at *L.*, and there baptized as the daughter of the said "*Thomas Ponton* and *Elizabeth* his wife." — LORD KENYON: There is no doubt but that the second marriage was void, and consequently that the settlement of the pauper *Elizabeth* continued where the first husband was settled. I am therefore of opinion

that the order of Sessions, so far as it respects *the wife*, should be quashed: but affirmed as to *the child*, because the fair conclusion from all the facts stated is, that she was *a bastard*. The rest of the Court concurred, and the order of Sessions was quashed as to the mother and affirmed as to the child.

A bastard born several years after a certificate engaging to receive the child the mother was then pregnant with, and all other children she might afterwards have, and stating her to be an unmarried woman, is settled where born.

19. *Rex* v. *Mathon*, *T. T.* 37 *G.* 3. 7 *T. R.* 362. — *M. Cagear*, being settled at *M.*, and pregnant of an illegitimate child, went to *C.* in 1738, under a certificate from *M.*, in which the parish officers of *M.*, "for themselves and their successors, with the "consent of the parishoners, engaged to relieve and receive *M.* "*Cagear* with *the child of which she was then pregnant, and all* "*other children that she might thereafter have*, until she or they "should acquire a subsequent settlement, whensoever she or any "of them should become chargeable to or ask relief of their "parish." *M. Cagear* resided in *C.* under that certificate until her death, and in 1746 had the present pauper (*R. Cagear*) an illegitimate child, who continued to reside in *C.* until the present order of removal without having done any act to gain a settlement for himself. — BURROW, in support of the Order of Sessions, cited *Rex* v. *Ipsley*. (*a*) LORD KENYON C. J. It is not now necessary to question the propriety of the decision in *Rex* v. *Ipsley*. That certainly went much beyond the former cases on this subject. However, that is distinguishable from the present case. That only extended to the child with which the woman was then pregnant; and a child in *ventre sa mere* is capable of being described. But this child was not born until eight years after the certificate was granted; and being illegitimate, he is not included within the general words in the certificate, which extends only to legitimate children.

(*a*) *Ante*, pl. 15.

The 35 G. 3. c. 101. did not repeal 33 G. 3. c. 54. And, therefore, where an unemancipated daughter was delivered of a bastard child in the township of *I.* during her father's residence there under a certificate acknowledging him to be a member of a friendly society established under 33 G. 3. c. 54: Held, that such certificate extended not only to him, but to all the members of his family also; that the daughter, therefore, was at the

21. *Rex* v. *Idle*, *M. T.* 59 *G.* 3. 2 *B.* & *A.* 149. — Removal from *I.* to *R.* of *M. W.* and her bastard child. Order confirmed as to the mother, and quashed as to the child, subject, &c. — The pauper *M. W.*'s settlement was admitted to be in the township of *R.*, derivatively under her father *J. W.* For several years prior to the 4th of *October* 1817, the said *J. W.* was an efficient member of a friendly society, legally established in pursuance of the act passed in the 33d year of *George* the Third, entitled, "An act for the encouragement and relief of friendly societies." And on the 4th of *October* 1817, a certificate as to that fact was duly made and given by the president and stewards of the society; and the same was afterwards duly verified before, and certified by a magistrate, according to the provisions of the several statutes made concerning friendly societies. [The case then proceeded to set out the certificate, which was in all respects regular.] This certificate and the verification thereof were, on the 7th of *October* 1817, delivered to the churchwardens and overseers of the poor of the township of *I.* The bastard child was born in that township on the 19th of *November* 1817, whilst *J. W.* and his family (of which the said *M. W.* was then a member) were residing there, under the authority, or supposed authority, of the certificate and the acts relating to friendly societies. — ABBOTT C. J. This case has been most fully and satisfactorily discussed, and the opinion I had originally formed has been changed in the course of the argument. I am of opinion that the original order of the two magistrates was good, and that

time of her delivery residing in the township under the authority of 33 G. 3. c. 54. and that by § 25. of that act, the settlement of the child followed that of the mother.

the Sessions were mistaken in their judgment. It has been argued, that the friendly society act was repealed by the subsequent act of the 35 *G.* 3. *c.* 101., which provides that no person shall be removable from any parish until actually chargeable, and thus, it is said, rendered wholly unnecessary the former protection by certificate under the friendly society act. But I think that is not so; for it may be very convenient, notwithstanding the effect of the 35 *G.* 3. to keep the provisions of the 33 *G.* 3. in force. In many cases a labourer who might wish to come into a parish might not be able to obtain employment there, for fear that by so doing he might bring burdens upon the parish. But if he came with a certificate from a friendly society, that fear would be removed. It would, therefore, be depriving the members of such societies of a material benefit, if we were to hold the 35 *G.* 3. to be a virtual repeal of the provisions of the 33 *G.* 3. Then the question arises, Who are the persons protected by the latter act? The object of the act being to facilitate the finding employment, it should receive a liberal construction. I think, therefore, that the certificate granted to the head of the family protected not only him, but also all the members of the family, and placed them in the same situation in which he stood. If so, then they would not be removable till they became actually chargeable. According to the authority of the case of *Rex* v. *Great Yarmouth*, 8 *T. R.* 68. this woman, under the circumstances stated to us, was removable; but although that was so, still it may be very questionable whether, in this particular case, the parish officers were bound to remove the mother? There is an obvious distinction between the effect of a certificate under the 33 *G.* 3. and that of one under 8 & 9 *W.* 3. For the former of these two statutes enacts, "that every child born a bastard in a parish during the "mother's residence therein, under the authority of that act, shall "have the same settlement as the mother." The attention, therefore, of the parish officers would naturally not be called to the situation of a woman residing under a certificate granted under 33 *G.* 3., and I think, therefore, that they were justified in not removing in this case. No inconvenience can arise to the other parish from this; for if the mother had been actually removed, the child would have been born in their parish, and would have been settled there. They, therefore, are placed in no worse situation by our holding that the child shall follow the mother's settlement, though she was not removed. I think, therefore, that the parish officers were not bound in this case to remove the mother, and that the child being born in *I.*, whilst the mother was residing there under the authority of the 33 *G.* 3. *c.* 54., followed her settlement in *R.*, and that the order of Sessions was therefore wrong. —Bayley J. I entertained at first great doubts in this case, which the discussion it has undergone has, however, entirely removed. I agree with my Lord C. J. that the child in this case was settled in the parish to which the mother belonged, and on the ground that her residence there was protected by the 33 *G.* 3. *c.* 54. Before that act passed, persons likely to become chargeable were liable to be removed. That act, however, provides, that a person having a certificate under it shall not be removed, unless actually chargeable. The first question is, Whether that is repealed by the 35 *G.* 3. *c.* 101., by which a general provision is

made, that no person shall be removed until actually chargeable? But unless we see clearly that it was the intention of the legislature to repeal the former act, I think we ought not to come to this conclusion: for that act gave to persons certificated under it a special protection, subject to certain disabilities; and I think that a party who chooses to avail himself of that special protection ought to be allowed to do so; for it will materially facilitate his admission into a parish, on account of the disability he lies under of communicating settlements. If he goes with that certificate, he will be readily allowed to take a tenement, for he confers no settlement on his hired servants or apprentices. Although, therefore, the 35 *G.* 3. *c.* 101., did introduce a general provision, still, as it does not contain any thing to show that it was intended to repeal the 33 *G.* 3. *c.* 54., I think that act was not repealed. By the 17th section it appears that no member of a friendly society shall be *removable*. He, therefore, obtains a residence not only for himself, but also for those who may be considered as parcel of himself, his wife, and family. If he is removed, they are removed with him; and the section which says that he shall not be removed, virtually prohibits also the removal of his family. The 25th section does not use the expression, "during the member's resi- "dence," but, "during the mother's residence." Under the authority of the act, I think, therefore, that in this case the mother was residing under the authority of this act when the child was born. The parish might, perhaps, have removed the mother as actually chargeable under the 35 *G.* 3. *c.* 101. *s.* 6., but they were not bound so to do; for this section only meant to provide for the case of those unmarried women whose residence, when they were pregnant, was not protected by any previous act. I think, therefore, that in this case the settlement of the child follows that of the mother. — HOLROYD J. I am also of opinion that the 33 *G.* 3. *c.* 54. is not repealed by the 35 *G.* 3. *c.* 101. It certainly is not expressly repealed, for there is no reference in the latter act to the 33 *G.* 3. By that act it appears that members of a friendly society are protected, unless they become actually chargeable, or are found to ask relief for themselves and family; and in case any *daughter* shall become pregnant of a bastard, the 25th section enacts, that the child in that case should follow the settlement of the mother. Under this act, a daughter in this situation would not make the family removable as actually chargeable, because, not being settled there herself, the birth of her child would bring no charge on the parish. Then came the 35 *G.* 3., the object of which has been correctly stated to be, to prevent poor persons from being unnecessarily removed; and the sixth section enacts, that an unmarried woman with child shall be deemed and taken to be a person actually chargeable; but that clause goes on to state, that such a person shall be deemed chargeable, not generally, but "within the true intent and meaning of the act." Then that clause applies to persons whose residence was not previously protected, but not to cases where, under the friendly society act, the certificate would protect the parish where the child was born from the burden of its maintenance; and no mischief will follow from this construction of the act. I am, therefore, of opinion that the 33 *G.* 3. is not repealed by the 35 *G.* 3., and that the settlement of

the child in this case follows that of the mother. — Order of Sessions quashed, and order of magistrates confirmed.

An illegitimate child born in an extraparochial place does not follow the settlement of its mother.

22. *Rex* v. *St. Nicholas, Leicester, E. T.* 5 *G.* 4. 2 *B. & C.* 889. *S. C.* 4 *D. & R.* 462.—Upon appeal against an order of two justices, for the removal of *C. L.* from the parish of *A. S.* to *Saint N.*, the Sessions confirmed the order, subject to the opinion of this Court on the following case: The pauper was the illegitimate child of *E. L.* deceased, and was born in the month of *May*, 1822, in an extraparochial place, called the *Black Friars*, in *Leicester*, which is not a vill, and for which no overseers have ever been appointed. She was shortly afterwards taken by her mother to the parish of *A. S.*, where she remained until the death of her mother, and up to the time of making the order of removal in question. *E. L.*, the mother, had, six years previously to the birth of the pauper, gained a settlement in the parish of *St. N.*, and was legally settled in that parish at the time of the birth of the child and of her own death. — BAYLEY J. The argument in support of the order of Session is founded upon the assumption, that every person is by law entitled to a settlement in some place; but that is by no means the case, for foreigners have not any settlement in this country. A settlement attaches to those persons only, concerning whom those circumstances may be affirmed, which acts of parliament say shall give a settlement. Generally speaking an illegitimate child is settled in the parish where it is born. There are some exceptions to this general rule, noticed in the treatises on the poor laws. In most of the excepted cases, the mother, at the time of the birth, is in law, supposed to be in the place of her settlement where she ought to be: as where a woman with child is removed out of one parish into another, through the fraud or collusion of its officers, or where the child is born pending an order of removal. In one of these cases, the child, when born, is settled in the parish from which the mother has been fraudulently removed; in the other, in the parish to which she is ordered to be removed. In this case the child was born in an extraparochial place. It therefore has not any settlement by birth, and being a bastard it can derive none from its parent. In such cases, however, it is entitled to remain with its mother as long as the purposes of nature require it, and it will afterwards be entitled to relief as casual poor, although it has not any settlement. We are all of opinion that the order of Sessions must be quashed. — Order of Sessions quashed.

II. *Of legitimate Children.*

See stat. 8 & 9 *W.* 3. *c.* 30.

If the mother of a child born in one parish, die in another parish, while she is passing to a third, such child shall not be settled in the parish where it was left destitute by the *death of the*

23. *The cases of Clavely and Burton*, 2 *Bulst.* 351. — These matters being questioned at the Quarter Sessions for *Worcester*, were referred to the JUDGES OF ASSIZE. — One *D. C.*, with a young child under the age of *seven years*, going about as a wanderer, came with her child to the vill of *A.*, and desired a warrant to be conveyed to *E.*, where she had some friends, and where the child was born. The constable of *A.* thereupon made a pass to convey her to *E.*; and the constable of *A.* delivered her to the constable of *R.*, who delivered her to the constable of *B.*, and at *B.* the mother died. THE QUESTION was, Whether the *parish* where the mother *died*, or the parish where the child was

born, ought to keep the child? — The second case was, — One *E. B.*, being a *wanderer*, with three children born in three several parishes, came with them into *D.*, in the parish of *S.*, unto one *B.*, her sister, where she died; the three children being there left. SIR WILLIAM JONES and SIR JAMES WHITELOCK, having considered these cases, delivered their resolution thus. The children ought to be kept and provided for in the several parishes where they were born, and not in the parish where the mother died *in transitu*: because the place of birth is a settling of those children in a place certain, to keep and provide for them, and the wandering of the mother with them afterwards doth not alter the case; nor shall the dying of the mother in a parish, having the children there, be said to be a settling to make the parish, where the mother died, to keep the children, but the place of birth; that is the place to be looked after, for the *place of birth*, or the place of *their last habitation*, if the same may be known, are, in judgment of law, *the place of settling*. So that if one be born in such place or parish, and afterwards be an inhabitant, in service, in another place and parish, and after this become to be *a wanderer*, he is then by the law to be sent to the *last place of his settling*, to be there kept and provided for, and not as a *wanderer*, *rogue*, or *vagrant*.

mother, but shall be settled where it was born.

24. *Whitechapel* v. *Stepney*, *M. T.* 9 *W.* 3. *Carth.* 433.— One *B.* had two children, born in the parish of *W.* The father died, and the mother married again. Not long afterwards the husband and wife ran away, and deserted the children, who were afterwards privately dropped in the parish of *S.*; one of them being two years old, and the other four years old. They were removed to the parish of *W.*, but the order was vacated upon appeal; and the reason expressed in the order of Sessions was, because *S.* could not prove that *B.*, the father of the children, was ever legally settled in *W.*; though in the same order it was acknowledged, by express words, that both the children were born in *W.* It was now moved to quash this order of Sessions; the question in law being, Whether the *birth* of these *legitimate children* shall gain a settlement for them when the parent is dead and the place of his last settlement unknown, and so must be esteemed as a vagabond? IT WAS AGREED BY ALL, that the birth of a bastard child gains a settlement for that child, and also that a *legitimate* child gains no settlement by its *birth*, when the place of the parent's last settlement is known, but that such child must follow the settlement of the parent. — THE COURT: But this order of Sessions must be quashed, and the order of the two justices confirmed; because where the parent is *a vagabond*, the *birth* of a *legitimate child* gains a settlement, for otherwise it will be born in vagrancy.

A *legitimate child*, where the settlement of its parent is unknown, gains a settlement by *birth*; but where the settlement of the parent of a legitimate child is known, such child must follow the settlement of the parent.

25. *Dalton*, 168. — A travelling woman, having a small sucking child, was apprehended for felony, sent to gaol, and executed; and the place of the birth of this child not being known, it was sent to the town where the mother was apprehended, for that town ought not to have sent the child to gaol, the child being no malefactor.

If the place of settlement, either by *parentage*, or *birth*, be not known, the *place* where a child is first known to be, is its settlement. S. P. Comb. 364.

26. *Cunmer* v. *Milton*, *M. T.* 2 *Ann.* 6 *Mod.* 87. — A child was born at *C.*; the father, while the child was under seven years of age, removed to, and gained a settlement in *M.* And this was held a settlement for the child. And it was said by the Court,

The primary settlement by *birth*, may be vacated by a new settlement.

by *parentage*; although the child be under *seven years of age*.

that if a father be settled in a parish, and die, and afterwards his wife dies in childbed, he shall be there settled.

The place of *birth* is, with respect to *legitimate* children, the place of settlement only *quousque* a settlement by *parentage* can be found.

S. C. 11 Mod. 267.

S. P. in Coxwell v. Shillingford, Fort. 313.

27. *Cripplegate* v. *St. Saviour's*, *H. T.* 8 *Ann. Foley*, 265. — A child of three years of age was removed from *C.* to *St. S.*, as to the place of its *birth*. — THE COURT: The father's settlement is the settlement of his *legitimate children*, when it can be found out, otherwise the place where a child is born is, *primâ facie*, the settlement of the child until there is another settlement found out. So a bastard's settlement is the place of its birth, because it is *nullius filius*. If a child be dropped in a parish, the parish officers may remove him to the place of his birth, or to the place of the father's settlement. The settlement by birth is only *quousque* they find the father's settlement; and if they never find it, it is absolute upon them. — NOTE; In this case, it was agreed by the whole Court, that the age of a *nurse child*, so as to go along with its mother, is, until *seven years* of age.

The settlement by *birth* may be proved by the copy of the parish register of christenings, and by identifying the person.

See Rex v. Bucklebury, *post*, pl. 43.

28. *Rex* v. *Creech St. Michael's*, *E. T.* 14 *G.* 3. *Burr. S. C.* 765. — Six children were removed from *Creech St. Michael* to *P.*, as to the parish where their father was born. Upon hearing the appeal, (the father, who was contained in the order, being run away,) in order to prove his *birth* in the parish of *P.*, the following copy of a register was produced, taken from the parish register of *P.* "Christenings 1775, *John*, son of *John Every* and *Mary* his "wife, baptized December 5." It was also proved, by *vivâ voce* testimony, that the *John Every* who lived in *P.*, and died long ago, was considered as the pauper's father; and that a *Mary Every*, who lived in *P.*, was understood to be the pauper's mother, and that he had been heard to call her "mother." The Sessions thought this was not sufficient evidence to prove the *birth*, and to *identify* the person of the father of these children, as better evidence might have been adduced for that purpose, and therefore discharged the order of the two justices. — But on this order being removed, LORD MANSFIELD seemed to think the evidence sufficient; and on cause being shown, the order of Sessions was quashed, and the original order was affirmed.

The birth of a pauper removed as a married woman is sufficient *primâ facie* evidence of the settlement to oblige the other side to go on.

29. *Rex* v. *Woodford*, *H. T.* 23 *G.* 3. EDITOR'S *MSS.* — An order of removal had been made at the *Dorchester Sessions*, where the course is for the appellants to begin. — COWPER now moved to quash this order. The appellants proved the *birth* of the pauper, who was removed under the name of *A. P.*, widow, by the register of the respondents' parish, in which her maiden name appeared to be *A. S.* The Sessions thought the proof of the pauper's maiden settlement sufficient *primâ facie* evidence to oblige the respondents to go into the real point in dispute between the parties. This the respondents refused to do, alleging that there was no case brought before the Court by the appellants. Upon which the Sessions quashed the order, as being unsupported. — COWPER, as the ground of his motion, insisted, that the pauper not being removed as *a single woman*, her *birth* was no evidence at all of her settlement, unless it had been shown that her husband had no settlement. — THE COURT refused to grant a rule to show cause, saying, that the Sessions had done right; for that the proof of the *birth*, although the pauper was removed as a person who *had been* married, was sufficient in the first instance, unless the

parties had been surprised by such evidence. The husband of this pauper, perhaps, had no settlement; or even supposing that he had a settlement, until that settlement be discovered, the woman's own settlement would, in the mean time, remain. The motion was accordingly denied. (*a*)

30. *Rex* v. *Whixley*, *H. T.* 26 *G.* 3. EDITOR's *MSS.* — *T. P.* his wife and children were removed from the township of *W.* to the township of *H.* The Sessions quashed the order, and stated, that *F. P.*, the mother of the pauper, deposed, that her son, the pauper was born at *H.*; that her husband, the father of the pauper, had before her marriage with him, served two years in *H.*, and therefore belonged to that place, but that she had no conversation with him about his settlement, nor did she know, or ever hear that he was hired for a year there; that her husband was still living at *A.*; but he was not brought, or attempted to be brought, to prove his settlement. This case was argued by FEARNLEY for the order, that is for the township of *H.*, and COCKELL for the township of *W.* It was stated that, at the West Riding Sessions, the practice is for the respondents to begin (*b*); that COCKELL accordingly, for the respondents, called the pauper's mother to prove his *birth* as a *primâ facie* settlement, and then stopped; that it came out, on the cross-examination, that the father was alive, and might have been produced; upon which the Sessions quashed the order, without going into the appellants' case; it having been understood, that if the Court should be against the appellants on this point, they should be at liberty afterwards to go into their case. — FEARNLEY now argued, that the settlement of *the parents* was immediately communicated to *the child*; that *the birth* only afforded a presumption of a settlement, which was sufficient, when no evidence of the actual settlement could be had. But here the parents might have been produced, and therefore it was incumbent on the respondents, first before the justices, and afterwards on the appeal, to prove an actual settlement, or to show that there was none, except by birth. — COCKELL, *contra*, said, that *birth* was certainly no more than a *primâ facie* settlement, and that he had offered it only as such. The effect of it was to throw the proof on the other side; that all the books began with birth as the first settlement; and at many Sessions, where the practice was for the appellants to begin, the constant way was for them to prove the birth. — THE COURT was of opinion, that proving the place of the *birth* of a child, was proving its primary place of settlement, and therefore sufficient to throw the burthen on the other side, of proving a different place of settlement by *parentage*, if the fact would enable them so to do. (*c*)

The place of *birth* of a legitimate child shall be taken to be the place of its settlement, although it appear, that his father is still living, and had served two years in a different parish; for non *constat* that the service was under a hiring for a year.

(*a*) See Rex *v.* Inhabitants of Ryton; Rex *v.* Inhabitants of Hensingham; Rex *v.* Inhabitants of Hedsor; and Rex *v.* Whixley, Chap. II. *post*.

(*b*) See Rex *v.* Woodford, *ante*, pl. 29.

(*c*) And upon the authority of the above case was determined that of Rex *v.* Inhabitants of Heaton Norris, E. T. 36 G. 3. 6 T. R. 653.—Two justices had removed Ann, the wife of Benjamin Lomax, a soldier, and her three children, from Heaton Norris, in Lancashire, to Beard, in Derbyshire. The Sessions quashed the order, and stated, that the respondents rested their case on the *birth settlement* of Benjamin Lomax, in Beard, proving that he was born there; that it appeared from the evidence on the part of the respondents, that his father had come to reside in Beard only two years before Benjamin was born, an entire stranger to the

The Sessions having decided in favour of a settlement in A, by which the pauper's father was proved to have been *relieved while resident in another parish* 40 years ago, and before the pauper's birth, and the only evidence to oppose this being that of the pauper's own *birth* in B, this Court confirmed the order of Sessions on a case reserved.

31. *Rex* v. *Wakefield, T. T.* 44 *G.* 3. 5 *East*, 335. — Two justices removed *Mary the wife of* G. F. *and her five children*, by name, from the township of *A.* to the township of *W.*, both townships being within the parish of *W.* in the county of *York*, and maintaining their own poor separately. On appeal the Sessions confirmed the order of removal, subject to the opinion of this Court on the following case: The respondents, in support of the order of removal, proved that the appellants had at various times during forty years past relieved *G. F.*, the father of *G. F.*, the husband of the pauper *Mary*, and different members of his family, some by being taken into the appellant's workhouse, and some in otherways during the time that they resided in the township of *S.*, and had provided coffins for and defrayed the expences of the funerals of some of the family. It was also proved that *G. F.*, who is now thirty-eight years old, the husband of the pauper *Mary*, and father of the other paupers, was born and has always lived in the township of *A.* The above was the only evidence given in support of or against the order of removal. — LORD ELLENBOROUGH C. J. The relief was given by the township of *W.* to the *father* of the pauper's husband and to different members of *his* family, which must mean the family of the pauper's husband's father: and this while they were residing in another township. This was *evidence* of the father of the pauper's husband's settlement in *W.* at that time: and this is stated to have been done at different times during the last forty years; the particular periods are not material; for no other settlement has been established since: and all things are presumed to continue in the same state unless something be shown to the contrary. Then the only evidence set up against this is that of the birth of the pauper's husband in *A.*, which is no more than *primâ facie* evidence of a settlement there. Then if there were evidence on both sides the Sessions were to decide on it. — GROSE J. There was *primâ facie* evidence on both sides, on the weight of which the Sessions were to determine. — LAWRENCE J. I am of the same opinion. The father was relieved forty years ago by the township of *W.*, which must have been before the birth of the pauper's husband, who is now only thirty-eight years old. — LE BLANC J. The least that can be said is, that there was evidence on both sides; but the place of birth is the weakest evidence of settlement. — Orders confirmed.

A child eight years old, born in *England*, but both whose parents were *Irish*, and without any settlement

32. *Rex* v. *Great Clacton, H. T.* 60 *G.* 3. & 1 *G.* 4. 3 *B.* & *A.* 410. — The pauper. *J. W.*, aged about eight years, was removed, by an order of two justices, from the parish of *St. M.*, to the parish of *G. C.* Upon appeal the Sessions confirmed the said order, subject, &c. *W. W.*, the pauper's late father, was born in *Ireland*, and was married in that county in 1807, to *A. C.*, who was also born there.

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place, neither he nor any part of his family having been at Beard before, nor having had any property or connection in the place; and that he came from Bolton, in Lancashire, where he had been many years the occupier of a public house: but it was not proved that any inquiry had been made by the respondents respecting the father's settlement: *and Topping, who* was to have argued in support of the order of Sessions, acknowledged, that after the determination in the two cases above stated, of Rex *v.* Woodford and Rex *v.* Whixley, he could not dispute but that the place of the birth of the pauper's husband was *primâ facie* the place of his settlement: and the Court being of the same opinion, the order of Session was quashed.

The pauper was born in 1810, in the parish of *G. C.*, and the father died in the parish of *St. M.* in 1817, without having gained any settlement in *England*. The mother subsequently married *H. F.*, a settled inhabitant of the parish of *St. M.*, where she resided, and the pauper had become chargeable. Before the last marriage she had acquired no settlement in *England*.—THE COURT held that the removal was properly made. Without determining what might have been the case if the mother had been also removable at the time, it is clear here that she having acquired a settlement by marriage, the pauper's case is to be considered as if he had no parent alive. Then, if so, the clause in question only applies to persons who are themselves born in *Ireland*, which he was not. The order of Sessions must, therefore, be confirmed. — Order confirmed.

in *England*, and whose mother, after the death of her first husband, had married a settled inhabitant of the parish of A, is removable, if chargeable, to the place of his birth, and is not within the 59 G. 3. c. 12. § 33.

CHAPTER II.

SETTLEMENT BY PARENTAGE.

I. *By Settlement of the Father.*
II. *By Settlement of the Mother.*
III. *Of Emancipation.*

I. *By Settlement of the Father.*

Foreign parents, who have gained no settlement, cannot communicate a settlement to their children. S. C. Poor's Sett. 201.

33. COWRED's *case*, *T. T.* 6 *W. & M. Comb.* 287. — A Dutch woman, of the name of *C.* with her two children, landed at *Harwich* from *Holland*, and, removing to another place, were sent back to *Harwich* by an order of two justices. — DARNEL: Landing makes no settlement — SHOWER: It is within the equity of the act. — EYRES J. You must keep them when you have them, for aught I know; for it seems to be *casus omissus*.— The order was quashed.

The father's settlement shall be conferred on a legitimate child, although such child be *an idiot*. Comb. 380. Mod. Cas. 87.

34. *Hard's case*, *M. T.* 8 *W.* 3. 2 *Salk.* 427. — SHOWER moved to quash an order for the removal of *an idiot* to the place of the last legal settement of *his father*, comparing it to the case of *a bastard*, who is to be maintained by the parish where it was born. But by HOLT C. J. The father of *an idiot* ought to maintain him, and if he cannot, the parish or place where his father is settled. There is no difference to be made in this respect between an idiot and any other poor child. But the case of *a bastard* differs, because he has no father, or none whom the law takes notice of as such; and, therefore, until the 18 *Eliz. c.* 5. the parishes where *bastards* were born were bound to maintain them.

The father's settlement communicated to his children is not changed by the marriage of his widow. S. C. Fort. 307.

35. *Rex* v. *Saxmundham*, 12 *W.* 3. *MSS.* — A child of a former husband, though but a year old, when a woman is married to a second husband cannot gain a settlement in the parish where she goes with such second husband, but shall only go there for *nurture*, and be maintained by the parish where the child's father had a settlement; and so also if a bastard. Cald. 10.

If H being settled at A and having several children there, remove to and gain a settlement at B, his children under the age of *seven years* are settled at B. S. C. 3 Salk. 259. Fort. 322.

36. *Rex* v. *Cumner*, *T. T.* 1 *Ann.* 2 *Salk.* 528. — *H.* was settled at *C.*, and had several children born there; afterwards he removed to and gained a settlement at *M.*; and becoming poor, his children, under the age of *seven years*, were sent back to *C.* — POWELL J. held, that when a child is sent with the parents for *nurture* only, it gains no settlement; but here the children did not come by order; and the children's settlement shall not be divided from *the father*, for that would be unnatural. Where a man gains a settlement for himself, his wife, and servants, he shall likewise gain one for his children also; but if *a widow*, having children under seven years of age, marry a second husband of another parish, they shall go with her for *nurture*, but shall not gain a

settlement there, and shall return when they are seven years old. She cannot gain a settlement for them, being under coverture, and she only gains a settlement for herself, as being part of her husband's family. — HOLT C.J. BIRTH is the first settlement, and there must be another by *forty days*, &c. to alter the first settlement. A child under the age of seven years is accounted *a nurse child*. If a child above seven years of age be put out to nurse, or for education, it gains no settlement: the question here is, Whether the first settlement by *birth* is altered by the father's gaining a new settlement? Suppose the father and mother come to *A* and then go to *B*, and within forty days the mother is delivered of a child, the child though legitimate shall be settled where born. The father indeed ought to maintain his children: the justices cannot remove the children from the father till he fall to decay. If a father be settled and die, and his wife being big with child die before the child is born, and after her death the child is born, it is settled at the place of its birth. (*a*) In this case the settlement of the father at *Milton* is the settlement of his children. The child is settled by *birth* only where it is an *accidental settlement*.—The order was quashed.

(*a*) See Rex *v.* Clifton, *contra*.

37. *Coxwell* v. *Shillingford*, *H.T.* 4 *Ann. Fort.* 313. — By HOLT C. J. The birth of a *legitimate child* does not make a settlement, but the place of the last legal settlement of the father. A legitimate child *born*, or a child dropped, in a place where a person is vagrant, gains no settlement by being dropped, but where the father was last legally settled.

The father's settlement is the settlement of his legitimate children in whatever place they may be born.

S. P. Reg. *v.* St. Giles, Foley, 269.

38. *Rex* v. *Clifton*, *M. T.* 5 *Ann.* 19 *Vin.* 382. — If the father die before the child is born, yet the child shall be settled where the father was settled before his death.

A legitimate child, though born after the father's death, shall inherit his settlement. See Rex *v.* St. Mary Cardigan, *post*, pl. 45.

39. *St. Giles Reading* v. *Eversley Blackwater*, *H. T.* 10 *G.* 1. *Str.* 580. — *W. C.* having gained a settlement in the parish of *E. B.*, removed into the parish of *St. G.*, and married there, and had two children born there, and lived there till his death, but gained no new settlement in that parish. After the death of *C.*, the children were removed by order of two justices to *E. B.*, the place of their father's last legal settlement; and upon appeal to the Sessions the order was quashed; the Sessions being of opinion, that the children could not be removed to *E. B.* after their father's death, he never having been in that parish after they were born, and having lived with his children always in the parish of *St. G.* — But it was held by PRATT C.J. POWYS, FORTESCUE, and RAYMOND Js. (*a*), that though the place of the birth of a poor child, when the father has got no settlement, is the place of the settlement of the child; yet where the father has gained a settlement, his children, though born in another parish, shall be looked on as settled at the place of their father's last legal settlement, and shall be removed thither, as well after the death of their father, if occasion require, as in his lifetime, supposing they have

The settlement of the father is the settlement of his unsettled children, although the father resided elsewhere at the time of, and ever after their birth; and the children may be removed to such place of settlement after the father's death, although they were never there during the lifetime of their parent.

S. C. Str. 580. 2 Sess. Cas. 116. 8 Mod. 169.

(*a*) According to the report of this case in Strange, 580. *Raymond*, J. dissented from the rest of the *Court*; but according to 8 Mod. 169, 2 Sess. Cass. 116. the whole Court were *unanimous*.

Fort. 320. Andr. 350.

gained no settlement of their own: and therefore the order of the Quarter Sessions was quashed.

The wife and children of a man may be removed to the place of his settlement, though *he* is alive and does not reside there.

40. *Rex* v. *Ironacton*, *M. T.* 14 *G.* 2. *Burr. S. C.* 153. — Two justices, upon complaint that *M.* the wife of *W. K.* and eight of their children (naming them) had intruded into *P.*, removed them to *I.*, which they adjudged to be the last legal settlement of *the husband*. An OBJECTION was made, that the wife and children are removed without the husband. — PER CURIAM: How does it appear that the husband was not at *I.* at that time? We cannot suppose it to be wrong, unless it appear so: the supposition is rather, that he is at the place where he is adjudged to be legally settled. The intrusion complained of is only that of the wife and children. How could the justices remove the husband when he was not complained of?

A legitimate child has a right to its *parent's* settlement; *the father's* shall take effect first: but if the father has no settlement, then the children shall go to *the mother's*; for in such case, the mother's maiden settlement is not extinguished. S. P. in St. Giles *v.* St. Margaret, Foley, 287. in Rex *v.* Westerham, Str. 683.

41. *Rex* v. *St. Botolph's*, *H. T.* 28 *G.* 2. 2 *Burr. S. C.* 367. — *E.* the pauper, being settled in the parish of *St. B.*, married *F.*, an *Irish sailor*, who had no settlement as far as she knew, and who was alive as she believed, having then lately heard so. The Sessions removed her and her child to *St. B.* as to the place of her last legal settlement. LORD CHIEF JUSTICE RIDER delivered the resolution of the Court. *St. B.*'s parish was once the place of *E.*'s settlement, and would so continue till she had gained another. It could not cease by any other method. A man cannot give away, or release, or suspend his settlement, for the public is concerned in it as well as himself. If a man have a settlement, his wife and children will be entitled to it; but if he have none, they can have none from him. It is objected, that this will separate the wife in effect from her husband, and amount, in effect, to a divorce. But they are separated already, for he has left her; and since he has no settlement of his own, he may as well go to her in her own maiden settlement as in another place. It is no hardship upon the parish where she was settled before coverture, if her former settlement was never determined; because, as long as that continues, it is their duty to maintain her. There are four cases in point, that the wife's maiden settlement remains, unless she acquires another, and there is a fifth pretty nearly so. We therefore are all of opinion, that the mother's maiden settlement remains, having never been determined, but only, as it were, suspended during the time that she continued under the power and protection of the husband, and was maintained and supported by him. A *legitimate child* has a right to its *parent's* settlement. The *father's* shall take effect first; but in cases like this where the father has none, the child must go to its *mother's* settlement, and not merely for nurture. — The orders were affirmed.

A child born a bastard, whose parents afterwards intermarry, and whose father afterwards procures a certificate for himself, his wife, *and his child*, shall gain his father's settlement, *and not be settled where born.*

42. *Rex* v. *Tostock*, *H. T.* 13 *G.* 3. *Burr. S. C.* 737. — *E. P.* was born at *T.* of the body of *E. P.*, spinster; and *E. J.*, who was settled at *I.*, but then resided at *T.*, was the reputed father. Soon after the birth of this bastard child, its parents intermarried; and after the said marriage the overseers of *T.* desired *J.* to get a certificate from *I.*; and he accordingly applied to the parish-officers of *I.*, and they, without being informed that the child was a bastard, gave him a certificate for himself, his wife, and his child, whereby they acknowledged the said *E. J.*, *E.* his wife, and *E.* their son, to be inhabitants of the parish of *I.* The question was, *Whether* under these circumstances the child was settled by *birth or parentage?* And THE COURT held, that the parish of *I.* was

bound by their certificate, and was thereby estopped to say that the child was not the son of the paupers; and therefore that the child was entitled to the father's settlement the same as if it had in fact been a legitimate child.

43. *Rex* v. *Bucklebury*, *E. T.* 26 *G.* 3. 1 *T. R.* 164. — Two justices removed the paupers *E. K.*, *J. K.*, and *S. K.*, three poor children, all of them under *five years* of age, from *Bucklebury* to *Bradfield*. The Sessions quashed the order, and stated the following case: The paternal grandfather of the three paupers was, at the time of his death, settled in *Bradfield*. He left several children by his wife *E. K.*, and amongst others *C. K.*, who went to the parish of *T.* in the year 1777, where he married *S. S.* *S. S.* died about *Christmas* 1784. *C. K.* in the year 1785 brought the three paupers to *E. K.* his mother, in *Bucklebury*, and told her they were his children, and desired she would take care of them, and promised to send money from time to time to pay for their maintenance. The paupers remained with *E. K.* about fourteen weeks, at the end of which time *C. K.* her son not having sent money sufficient for their maintenance, and *E. K.*, who had herself received parish relief, being unable to maintain them, they were removed to the parish of *Bradfield*. On these orders being removed into the Court of King's Bench, it was contended; 1st, that as it appeared they were *nurse children*, they ought not to have been removed without their father or mother, unless the order had stated that the parents were dead, and that *Bradfield* was the last settlement of the father (*a*); 2d, that the order had been made on the examination of the *grandmother*. But THE COURT were clearly of opinion that there was no objection to the competency of her evidence (*b*), and that it was incumbent on the parish of *Bradfield* to have shown that the father had gained a subsequent settlement. And the order of Session was quashed, and the original order confirmed.

Nurse children may be removed to their father's settlement if the mother be dead.

(*a*) See this point *post*, removal of poor, § 6.

(*b*) See Rex *v.* Creech St. Michael's, *ante*, pl. 28.

44. *Rex* v. *Stone*, *M. T.* 35 *G.* 3. 6 *T. R.* 56. — Two justices removed *M.* the wife of *T. D.*, and *M.* her infant daughter, from *S.* to *L.* Upon appeal the Sessions quashed the order; stating that *T.* had left his wife and family for three quarters of a year, during which time his wife had not heard of him, nor had he since been at *S.* or *L.*; that the settlement of *T.*'s father was in *L.*; but that *T.* himself was not born there; and that it did not appear by the evidence of *T.*'s father or wife, or by any other testimony, that he had gained any settlement in his own right. The justices further stated that the order of removal had been made without any examination of the husband of the pauper *M.*; and that they were of opinion that due diligence had not been used by the respondents to find him out. But LORD KENYON C. J. said there was nothing in the case; that the evidence produced was legal evidence, and, if not contradicted, sufficient to establish the settlement in *L.*; but that the Sessions seemed to have thought it indispensably necessary to procure further evidence, in which they were mistaken. — The order of Sessions was quashed.

For proof of the *father's settlement* is sufficient to establish the settlement of *his children* in the same parish, if nothing appear to contradict it.

45. *Rex* v. *St. Mary Cardigan*, *M. T.* 35 *G.* 3. 6 *T. R.* 116. — *J. J.*, the husband of the pauper *E. J.*, gained a legal settlement by servitude in the parish of *L.* in 1767. He was afterwards tried for sheepstealing and was *convicted, and had* sentence of death

The settlement of a person attainted, acquired before the attainder is com-

municated to his children born afterwards.

passed upon him in the year 1770, but escaped from gaol before the time appointed for his execution. Two years afterwards he returned to *C.*, and continued to live there till the year 1792; and during that time married a wife, by whom he had two sons *D.* and *J.*, and on her decease married the pauper *E.*, by whom he had a daughter *M.* In the said year 1792 he again absconded, whereby his wife *E.* and his children became chargeable to the parish of *St. M.* in *C.* The settlement of the wife before marriage was in *St. M.* in *C.* — TOUCHET argued, that by the attainder of the husband all his rights were destroyed, and among them the right of afterwards communicating his settlement to his wife and children, and cited the *Sudbury* case (*a*), where it was held by the committee of the House of Commons that a person attainted of felony was disqualified to vote; and the case of the *Duke of Beaufort* v. *Berty* (*b*), and *Dalton*, 103. — LORD KENYON C. J. This is a new case in the law of settlements; and although the most has been made of it in the argument, I cannot bring my mind to doubt about it. None of the authorities referred to bear upon the present question. A settlement is not the property of any man; it cannot escheat; neither can it be called a franchise; in the case of a franchise, it was rightly decided that by attainder the franchise was lost, and that the party had no right to vote at an election. But this person was before his attainder settled in the parish to which the paupers were removed, and I think the father's settlement was communicated to them, and that the justices at the Sessions were mistaken. It would be another question whether the man himself could acquire a settlement after the attainder.

(*a*) Heywood on Elections, 221.

(*b*) 1 P. Wms. 706.

II. *By Settlement of the Mother.*

If a mother acquire a new settlement, not in her own right but by marriage with a second husband, her children by the first husband retain their original settlement by *birth* or *parentage*, and cannot be removed with the mother, except for *nurture*, while under seven years of age.

46. *Wangford* v. *Brandon*, *E. T.* 10 *W.* 3. *Carth.* 449. — Three poor men of *W.* came into the parish of *B.*, and married three poor widows of that parish, who received relief, &c. Each of the said widows had children by their former husbands; some of them being under seven years of age, and others above that age. An order was made by two justices, which was confirmed by the Sessions on appeal, removing not only the three men and their wives, but also their children, from the parish of *B.* to the parish of *W.*, as to their last place of settlement. — HOLT C. J. The children are not removable into the parish of *W.*, to charge that parish by settling them there; but as to the *nurse children*, under the age of seven years, they might be sent thither with their mothers for *nurture*, but still the parish of *B.* must relieve them there, and not the parish of *W.* And as to the other children, above the age of seven years, they ought not to be removed at all, being settled inhabitants in the parish of *B.*; and the removal of their mothers shall have no influence on the settlement of their children.

See Rex *v.* St. Giles in the Fields, *post*, pl. 49.

The settlement acquired by a wife, after the death of her husband, is communicated to such of her

47. *St. George's* v. *St. Catherine's*, *E. T.* 1 *G.* 1. *Ld. Raym.* 1474. — *J. C.*, at the time of his death, was legally settled in *St. C.*, and there died; and none of his children had gained any settlement distinct from the settlement of their father. After his death his widow and six children went to dwell in the parish of *St. G.*, where she took a house of TWELVE POUNDS a year, and

lived in it above four months, and paid the queen's tax, but never paid any rent to her landlord. — THE COURT: There is no distinction between the settlement of children with the father or the mother, for they are as much hers as the father's, and nature obliges her as much as the father to provide for them; so does the law; and every argument that holds for their settlement with the father, holds as to their settlement with their mother. The reason why children shall not gain a settlement where the wife gains a settlement only by intermarriage is, because it is not her family, but her husband's, and she cannot give the children any sustenance without the husband's leave. She is equally punishable with her husband for deserting her children, and therefore could not leave them behind her. These children certainly gained a settlement with their mother.

children as have not before gained a settlement for themselves.

S. C. 1 Sess. Cases, 69. 75. See the case of Rex v. Woodend, *post*, pl. 48. Foley, 254. Fortes. 218. Burr. S. C. 40.

48. *Rex* v. *Woodend*, *H. T.* 13 *G.* 1. *Ld. Raym.* 1473. — *J. B.* rented a tenement at *W.*, at 30*l.* a year, and inhabited upon it some years. He died insolvent. His widow then removed with her only child (the pauper), then about fourteen years of age, to *P.*, into a messuage of about 40*s.* a-year value, and some land of 10*l.* a year value, which was her own estate for life. The messuage was copyhold, as was likewise the land, which was let to a tenant. The pauper lived with her mother two years in the said messuage: And upon the authority of the case of *Rex* v. *St. Catherine's* (*a*), THE COURT held that the pauper had gained a settlement at *P.*, by living with her mother on her estate in that parish.

And where a wife gains a settlement in her own right, the children shall partake of it notwithstanding their previous settlement by parentage.

S. C. 2 Str. 746. 2 Sess. Cas. 124. Fort. 328. Bar. K. B. 11.

Foley, 279. 5 Burr. 2628. And see the case of Rex *v.* Barton, *post*, pl. 52.

49. *Tynton* v. *King's Norton*, *Lent assizes*, 1726, 13 *G.* 1. *MSS.* — The settlement of a pauper's mother was at *W.*; she married a *Scotchman*, who was a hawker and pedlar, and who had never gained any settlement in *England*. During the time that the father and mother were travelling up and down selling their goods, the pauper was born at the parish of *K. N.* The counsel for *T.* insisted that the pauper was *a vagrant*, and his settlement properly at the place of his *birth*. — But DORMER and FORTESCUE Js. were clearly of opinion that the pauper was settled at *W.*, and FORTESCUE said, if the mother have a settlemont the child is no vagrant.

The child of a woman whose husband has no settlement is not settled where *born*, but shall have *the mother's* settlement.

S. P. St. Giles *v.* St. Margaret's. Foley, 287.

50. *Rex* v. *St. Giles's in the Fields*, *T. T.* 6 & 7 *G.* 2. EDITOR'S *MSS.* — The pauper *Jacob M.* was the son of *John M.* by *A.* his wife: *A.*, before her marriage with *Jacob M.* and while she was a single woman, gained a settlement in the parish of *St. C.* The place of *John M.*'s birth could not be found; and it did not appear that *John M.* had gained any settlement since his birth, nor that his wife had gained any settlement since his decease until the time of her marriage with *M. S.* her present husband; which took place about two year since. — PAGE J. The second marriage of the mother does not gain a new settlement in the husband's parish for her children. The child now removed had actually gained a derivative settlement in the parish of *St. C.* — PROBYN J. It is certain, that where the father has a settlement, his children must be sent there. It is true, that *nurse children* cannot be separated from their mother, but that is on account of *nurture*, and they cannot gain a settlement by residing with the mother for this

A mother having, previous to her marriage, acquired a settlement in her own right by servitude, after her first husband's death acquired a new settlement by marriage; the children of her first husband, if the place of his settlement be unknown, shall go to the parish where the mo-

(*a*) *Ante*, pl. 47.

ther gained a settlement in her own right, and not to the place of her second husband's settlement. S. C. 1 Sess. Cases, 171. 1 Burr. Sett. Cases, page 2.

purpose; for they are to be maintained by the parish where they are originally settled. The father, in the present case, had no settlement in the parish of *St. C.*, in which parish the child was *born;* but by this new settlement in *St. G.*'s the pauper ceased to be a parishioner in *St. C.* The father's settlement cannot be discovered, and the child, I conceive, ought to be settled at that place in which the mother was settled at the time the order was made. — LEE C. J. The only question is, whether the settlement which the mother gained by her second marriage in *St. M.*, gains a setttlement for *Jacob M.*, who was born in the parish of *St. C.*: and this very question was determined in the case of *Wangford* v. *Brandon* (*a*): upon the authority of that case, therefore, I am of opinion that the child is settled in *St. C.*, where it was *born*, and where the mother had a settlement in her own right, and that this settlement is not affected by the mother's second marriage and removal into the parish of *St. M.*

(*a*) *Ante*, pl. 46.

A mother during the life of her husband, cannot gain a different settlement for her children from that which they derive from their father by parentage.

51. *Berkhampstead* v. *St. Mary North-Church*, *E. T.* 8 *G.* 2. *MSS.* — The case specially stated was, that *J. W.*, being settled at *N. C.*, went with A CERTIFICATE to *A.*, where he was made church clerk, and executed the office for some years, and then ran away from *M.* his wife and three children. Some time afterwards *M.*'s mother died and left her two houses in *N. C.*, one in fee and the other for life. *M.* went with her children and resided in one of these houses for two years, but not having sufficient she applied for relief to the parish for her and her children. The husband never returning, two justices made an order to remove the children, the youngest of them being *seven years* old, to *A.*, as to the place of their *father's settlement*. The Sessions on appeal quashed the order. — LORD HARDWICKE C. J. As this case is stated, the mother cannot gain a settlement for her children: the father, whilst alive, is the head of the family; and the children must derive their settlements through him. As to the cases of *foreigners* or *Scotchmen* who have no settlements, they are singular cases, and the wife gains a settlement through necessity: but there never was an instance where the wife was held to acquire a settlement during *the life* of her husband. The husband, in right of his wife, has a title to live at *N. C.*, but he can gain no settlement there without a residence for forty days. There must be, in all cases, an inhabitancy: the wife's inhabitancy at *N. C.* with her children is not the inhabitancy of her husband. A *feme covert* cannot by residence gain a settlement for her husband: the only doubt is, whether, as he is stated only to have been a clerk, we are bound to look on his appointment as for life. — PAGE and PROBYN Js. agreed. — LEE J. seemed to think that the mother could gain a *right of residence* for her children at *N. C.*, but he admitted that she could not gain *a settlement* for them during the father's life.

A child of *ten years of age* who possesses a *derivative settlement* from his father, may, after the death *of his father, acquire a new*

52. *Rex* v. *Barton Turfe*, *T. T.*, 8 & 9 *G.* 2. *Burr. S. C.* 49. — *T. M.* married *D.* the daughter of *F. B.*, having then *D.* (the person removed) his daughter, of the age of ten years or thereabouts. *T. M.* hired a farm of the yearly value of a hundred pounds in the parish of *B. T.*, where, after serving the office of overseer, he died. After his death, *D.* his widow removed from *B. T.* to *H.*, and dwelt there in a house, and occupied lands *thereto belonging* of the yearly value of four pounds, which house

and lands were given to her by the will of *F. B.* her father: and *D.* her daughter, being then of the age of thirteen years, went and lived there with her mother as part of her family (there being then several sons and other children) for about the space of one year and a half. THE SESSIONS adjudged that *D.* the daughter gained a settlement in *B. T.* in right of her father; and that having once gained a legal settlement in *B. T.* she could not afterwards gain a subsequent settlement in *H.* in right of her mother. — PROBYN J. said, the case is no more than this: Whether a widow removing with her children to her own estate, from whence she is *irremoveable*, does or does not acquire a settlement for her children who remove with her as part of her family? and upon the cases of *St. George* v. *St. Catherine* (*a*) and *Rex* v. *Woodend* (*b*), it is clear she does. — LEE J. observed, that it appeared that the daughter was then ten years of age; which circumstances raised some doubt in him. It is certain, he said, that a settlement is gained equally in the case of A MOTHER when the father is dead, as in the case of A FATHER by a *legitimate child*. But his doubt was upon the age of the child, which was *ten or more* when the mother went into the parish of *H.*: whereas in the cases cited the age of the children was under seven years. He said, he did not put it on the foot of *nurture*; but doubted whether a child acquires a new settlement after that age by going with the mother to the place of her settlement. — PROBYN J. It appears upon the order of Sessions that this child had not acquired any settlement of her own. She must, therefore, follow the settlement either of her *father* or *mother*. Now in all those cases that have been mentioned, the child had the same settlement under the *father* as this child had: and this order, as now returned, prevents us from surmising that she had gained any settlement of her own. Indeed, if a child be under seven years of age, it must go with the mother for nurture; but that is not the present case. — PAGE J. I think the age makes no difference. Indeed on account of *nurture* a child under seven must go with its mother; but it remains settled at the father's parish, and must be maintained by that parish. But where the mother goes to an estate of her own, from which she is irremoveable, a child may, after the father's death, gain a settlement under THE MOTHER, as well as it could under THE FATHER. — LEE J. I always took it, that in cases of *legitimate children* the first thing to be inquired into was the settlement of THE FATHER: if that cannot be found, then indeed the child's settlement must follow that of THE MOTHER. But this being a *derivative settlement* from the father, and the child being of so *advanced an age*, I should think it right not to be broken into and transferred to that of THE MOTHER, unless it appeared that the daughter had not acquired a settlement of her own. Upon this doubt the question was adjourned; and when it came on again, LORD HARDWICKE C. J. said, he did not know any such difference between one kind of settlement and another. The father and mother's settlement is just the same case. In the case of *Paulspury* v. *Woodend* (*c*), the child was thirteen or fourteen years of age. I think the order must be quashed. — LEE J. I never apprehended any difference between the case of THE FATHER and THE MOTHER; for that is the very same when a settlement is to be gained; but I thought *that as the child was* of sufficient age to

settlement from his mother by going with her into another parish, and living with her as a part of her family upon her own estate: and in an order for the removal of such child it is not necessary to state that it had not gained a settlement for itself.

(*a*) *Ante*, pl. 47.

(*b*) *Ante*, pl. 48.

(*c*) *Ante*, pl. 48.

gain a settlement, it might have been necessary that it should appear upon the order that no subsequent settlement had been gained by such child. In the case of *St. George's* v. *St. Catherine's* (a) it is stated that the child had not gained any subsequent settlement. In *Paulspury* v. *Woodend* (b), it was not so stated, nor any thing either one way or another. I had a notion that it had been held necessary that this should appear; and, upon looking into my notes, I find it was so in the case of *Woburn* v. *Woking* (c), where two children, the one *twelve*, the other *eight* years old, were sent to the father's place of settlement as the place of *their* last legal settlement; and an exception was taken, that the children appearing to be of these ages, their father's settlement did not necessarily give them a settlement in the same place; and PARKER C. J. laid it down, that where children are under seven years of age, the father's settlement is their settlement; but that if they are above seven, then the law supposes that they may have gained a settlement for themselves, unless the contrary appear, and therefore it shall not be taken for granted that they are settled with the father: so that it seems such children above seven years old must be taken to have gained a subsequent settlement for themselves, unless the contrary appear. And in the case of *Edgeware* v. *Harrow* (d), PARKER C. J. held, that the settlement of children was not gained by *inheritance*, but by their being *irremoveable*. The case of *Paulspury* v. *Woodend* (e) is, however, directly contrary to the case of *Woburn* v. *Woking*, and is exactly the same case with the present; for there the child was fourteen years of age, and it is not there stated that she had gained any other settlement. Therefore, though I have no note of that case, I am not for setting the question at large again. — LORD HARDWICKE C. J. I believe in the case of *Edgeware* v. *Harrow*, it was said, that there should be negative words that they have gained no other settlement; but it is going a great way to presume a settlement where none appears; and it is here sufficiently stated to be the place of the *legal settlement* of the child. — PROBYN J. The derivative settlement of a child from his father is what he has a right to by inheritance. — LORD HARDWICKE, C. J. If we go into presumptions upon special orders, it must make them very uncertain: the latter resolutions are to be followed. — Both the orders were quashed.

(a) *Ante*, pl. 47.

(b) *Ante*, pl. 48.

(c) Sett. and Rem. 17. Foley, 315.

(d) Foley, 294.

If a mother, after the death of her husband, gain a settlement *by estate*, her children shall partake of it.

53. *Rex* v. *Oulton, M. T.* 9 *G.* 2. *Burr. S. C.* 64. — *J. A.*, the father of the pauper, was settled in *O.*, where the paupers were born. Their mother had a copyhold messuage and lands in *B.* in her husband's lifetime, and after her husband's death removed thither with her said three children, and dwelt in the said house, and dwelt and continued there with them three months and upwards, and then sold the said house and lands. The Court was clearly of opinion that the paupers were settled in *B.*; for that it had been often holden, that a child after the death of the father may gain a settlement under the mother as well as it might before under the father. (e)

The mother's settlement is the settlement of her children and grand-children; if their *respective fa-*

54. *Rex* v. *St. Matthew's, Bethnal Green, M. T.* 33 *G.* 2. 2 *Burr. S. C.* 482. — *E. T.* was born in the precinct of *St. K.*, and married *E. B.*, whose settlement was unknown, and who had been dead many years; his widow afterwards married *I. C.*, a *Frenchman*, who never gained a settlement. The said *I. C.* and

(e) See the case of Rex v. St. Botolph's, Bishopsgate, *ante*, pl. 41.

his wife lived many years together in *B. G.* parish, and had *A. C.* born in the said parish, who married *M. D.* (the pauper), who was born in the same parish. *P. D.*, whose daughter *M.* was married to *A. C.*, was settled in the parish of *St. L.* The counsel for supporting the order attempted to set up a distinction or preference between *acquired* and *derivative* settlements. — LORD MANSFIELD: Upon this order it must be taken, that *St. K.* was the place of settlement of *E. C.*; her husband had no settlement; therefore her son and his wife must be settled there too. — MR. JUSTICE FORSTER: It is a common case, that if the father's settlement cannot be found, you go back to the grandfather's. — MR. JUSTICE WILMOT: Birth gives even a legitimate child a settlement, if its parents have none. *A. C.*'s settlement must follow that of his father, if his father had any; but in this case the father had none; but his mother had one in *St. K.*; therefore his settlement (and consequently that of the pauper's wife was,) where his *mother* was settled. There is no merit or pre-eminence betwixt settlements; they depend upon positive law; therefore there is no difference between an *acquired* and a *derivative* settlement. To this the rest of the Judges agreeing, the order of Sessions was quashed.

thers had no settlement; for there is no difference between *acquired* and *derivative* settlements.

55. *Rex* v. *Long Wittenham*, *M. T.* 25 *G.* 3. EDITOR's *MSS.* — About the year 1764 *J. W.* went with his wife *J.* under a certificate from *L. W.* to reside at *U.*, where, in the year 1765, he purchased a cottage with a small piece of ground for 5*l.* He lived in the cottage with his family under the certificate till his death, which happened on the 15th. of *February* 1784, and had four children born there, *J.*, *W.*, *M.*, and *R.* A little before the father's death he and all his family except *R.* were seized with the small-pox, and became actually chargeable to the parish of *U.* The mother and three children were ill of the small-pox at the time of the father's death, and continued to reside in the cottage, and were chargeable to the parish of *U.* for ten weeks; the eldest son being nineteen, and heir to his father. *R.*, before her father's death, to avoid infection, was removed to the house of a brother-in-law in the same parish, and was to return to her own family when they should be recovered, but which she never did. At the end of ten weeks from the death of the father, the mother and all the children, including *R.*, were removed by an order of two justices from *U.* to *L. W.*; and the Sessions confirmed the order. MILLS and ABBOT showed cause: They said, that in order to give a settlement, it was necessary that the pauper should reside and be irremoveable for forty days complete; that a widow's *quarantine* was only thirty-nine days, exclusive of the day on which her husband died (*a*); and they cited several cases to show where, in murder, and in other cases, a day was to be reckoned *inclusively* or *exclusively*. Besides, *quarantine* was merely a permission to inhabit, and gave no interest in the premises, which descended to the heir at law; it therefore should not give a settlement. And as to the case of *Rex* v. *Painswick* (*b*), they said the point was not much considered there, the question having been chiefly as to the settlement of the second husband and children, which was endeavoured to be supported of the wife's right to dower unassigned. That certificated persons could only gain a settlement by the *modes prescribed* by the statute; but,

A widow, by residence during her *quarantine*, gains a settlement for herself and children who are not emancipated, although they do not reside with her during the *quarantine*, by reason of an occasional separation. S. C. Cald. 474.

(*a*) See Lord Coke's 2 Inst. 17.

(*b*) Burr. S. C. 783.

admitting the mother gained a settlement for herself, the children ought not to gain a derivative settlement, particularly *R.*, who was never with her. — LORD MANSFIELD: She was irremoveable during the forty days: — BULLER J. As to the settlement of the mother, *Rex* v. *Painswick* is in point: one case is enough on settlement law. There is no pretence to say the children were emancipated: *R.* was put away only to prevent infection. — Orders quashed.

III. *Of Emancipation.*

Children after seven years of age may become emancipated from their parents, and gain settlements for themselves. S. C. Foley, 271.

56. *Dumbleton* v. *Beckford*, *E. T.* 7 *W.* 3. 2 *Salk.* 470. — A girl near thirteen years old had been at *D.*, and had always lived there with her grandmother. Her father was legally settled at *B.* She wanting relief, was, by an order of Sessions, charged on the parish of *B.*, because her father was settled there. This order was removed into the Court of King's Bench. — ET PER CURIAM: The order must be quashed; for although until *seven years of age* children are accounted *nurse children*, yet they must afterwards have maintenance from the parishes where they themselves are settled; and for any thing that appears in the present order, this girl may have gained a settlement for herself.

A child who on the removal of his father into another parish is left behind, and continues to work for himself, is divided from his father's family, and cannot derive a new settlement from him.

2 Sess. Cas. 129.

57. *Eastwoodhey* v. *Westwoodhey*, *T. T.* 7 *G.* 1. *Str.* 438. — Upon appeal from an order of two justices for the removal of *R. B.*, *E.* his wife, and *T.* their son under seven years, from the parish of *W.* to the parish of *E.*, the Sessions stated the fact specially for the opinion of the Court: — That forty years since, *T. B.*, the father of this *R.*, was seised a fee of a freehold estate in the parish of *H.* in the county of *B.*, where he lived till the year 1697, and had this son *R.*, who was at that time eight years old; that in 1697, the father and all his family removed to *C.*, where he rented a tenement of 20*l. per ann.* for two years; that in 1699 he purchased a copyhold estate of 11*l. per ann.* in the parish of *W.* whither he removed with his son and servants, and served church-warden and other parish offices, and paid taxes, till 1716, when he purchased a cottage of 1*l.* 12*s.* 6*d. per ann.* in *E.*, and went and lived upon it till his death; but they stated it specially, that *R.* the son stayed behind in *W.*, where he married a wife, and had worked ever since on his own account, and that he was thirty years old. Upon the whole, the Sessions confirmed the order of the two justices for his settlement at *E.* — PRATT C. J. The question is not where this man and his family are settled, but whether there appears a settlement of him in *E.* If he had gone thither with his father as part of the family, possibly it might have been a settlement of him there; but by staying behind he was divided from his father, and therefore there is no colour to make it a settlement in *E.* I think his settlement is in *W.*, which was the last place where he lived as part of the father's family. To which, POWYS J. agreed. — *Et per* EYRE J. He is settled at *W.*, and it is not material how that settlement was acquired, whether by his own act or the act of his father. Suppose a master has two farms in two parishes, and he removes during the year, and leaves the servant behind to take care of the farm, shall the master's gaining a new settlement transfer the settlement which the servant gains by his service? Certainly it shall not. — FORTESCUE J. *accord'*; and the order was quashed.

58. *St. Michael in Norwich* v. *St. Matthew in Ipswich*, *E. T.* 2 *G.* 2. EDITOR's *MSS.* — *E. W.* the father of *E. W.* the father of the children removed was legally settled at *S.*; and on his removing from thence to *B.*, had a writing given to him by the parish officers of *S.*, acknowledging that he was legally settled there. He continued under this certificate for more than twenty years in the parish of *B.*, where *E.*, the father of these children, received his birth, and continued to live with, and as part of, his father's family, following his father's business of a wool-comber, until he was nineteen years of age, at which period he left his father's house, and went to reside in the city of *N.* During his residence at *N.*, he successively married two wives, and by the first had issue *E.*, one of the male children now removed. Ten years after the birth of this child, his first wife died, and he then married *A.*, his now wife, by whom he had *S.* and *A.* the other two children now removed. Subsequent to the birth of these children, and about two years ago, *E. W.* the grandfather gained a new settlement in the parish of *St. M.* in *I.*; but *E.* his son, the father to these children, had never lived with the said *E. W.* the elder at *I.*, or any where else, since he lived with him at *B.*— REYNOLDS J. The question now is, Whether a man who has ceased to be part of his father's family can gain a settlement by the subsequent settlement of the father? and I do not see how it is possible for a father to gain a settlement for a son nineteen years after the son has left him.— RAYMOND C. J. I think it odd, that an old man of sixty years of age, who has left his father for forty years, shall follow the settlement of the father as often as he removes. In the case of young children, you cannot sever them from their parents, because of nurture; but after they have attained to seven years of age, they may gain a settlement by their own act. It is almost a contradiction in terms to say, that a man who has left his father forty years shall follow the settlement of the father.

A son who, when nineteen years of age, leaves his father's family, and goes into another parish, where he marries and has children, is *emancipated*, and cannot derive a subsequent settlement from *parentage*.

S. C. Str. 831. Burr. 108.

59. *Rex* v. *Silton*, *H. T.* 21 *G.* 2. 1 *Wils.* 184. — *G. M.* and *P.* his wife were certificated by the parish of *S.* to *W.*, and they there had a son born, *J.*, whom the parish of *S.* bound out apprentice to a *tailor* in the parish of *H.*, for eight years, which he served, and he afterwards married, and went to live at *W.*, where he and his family became chargeable, and by an order of two justices, confirmed by the Sessions, was removed to *S.*, the place of his father's certificate, the Sessions being of opinion, that he had not gained a settlement in *H.*, because the statute says, a certificated person can only gain a settlement by purchase, or serving an annual office. But THE COURT quashed both the orders, because when the parish of *S.* had bound out the son apprentice in *H.*, they had provided for him, and his service gained him a settlement *there; and he was no longer any part of his father's family after he was bound*, and *H.* was the last place of his legal settlement, and *W.* should have sent him thither.

If a certifying parish bind the son of a certificated man apprentice in a third parish, such son is thereby *emancipated* from his father's family. See Rex *v.* Horsley, *post*, pl. 737. Rex *v.* Alfreton, *post*, pl. 596.

60. *Bugden* v. *Ampthill*, *H. T.* 21 *G.* 2. *Burr. S. C.* 270. — In the year 1729, *J. G.*, the father of *T.* the pauper, came by CERTIFICATE with his wife and four children, of whom the said *T.* was one, from *R.* to *A.* They remained at *A.* till *T.* the pauper came of age. After the age of twenty-one, *T.*, who till that time had continued with his father, married in *A.*, left his father's

If a son after he is one-and-twenty years of age marry, and live separate with his wife and family from

his father, though in the same parish, yet he is so far *emancipated*, that the father cannot communicate to him a new settlement subsequently acquired.

S. C. Rex v. Heath, *post*, pl. 762.

(a) *Ante*, pl. 58.

house, and lived there with his wife and children distinct from his father, until removed with the five children who were born in *A.* Three years after the marriage of *T.*, *J.* the father removed from *A.* to *B.*, and there hired a tenement of ten pounds a-year; but neither *T.* the pauper, nor his wife, nor any of his children ever lived there. *T.* had not from his *birth* gained any settlement for himself by any act of his own, nor had his said five children or any of them done any act to gain a settlement for themselves. THE CERTIFICATE expressly stated, that the parish of *R.* would own *J. G.* and his wife and their five children, unless they or any of them should gain a settlement in the said parish of *A.*—LEE C. J. It was determined in the case of *St. Michael in Norwich* v. *St. Matthew in Ipswich* (*a*), that where a son marries and leaves his father's family and lives by himself, and after this the father gains a new settlement in a third parish, the son shall not follow the father in this new settlement, which is precisely the present case. — WRIGHT J. The son by virtue of his marriage becomes the head of his own family, which is an independent family; and it is a constant rule to set forth the ages of children, to show whether they are capable of gaining a settlement independent of their father. — DENNISON J. This subsequent settlement gained by the father cannot be communicated to the son, who never resided in *B.* with his father, but continued in the parish of *A.*, where his father lived before. The case cited is in point. The pauper ceased to be a part of his father's family upon his marrying and living separate and distinct from his father. — FOSTER J. was of the same opinion.

Marriage and living apart in a separate and distinct habitation from the parent family, do not of themselves create *emancipation*, if the husband has not gained a settlement for himself.

61. *Rex* v. *Cold Ashton*, *H. T.* 31 *G.* 2. *Burr. S. C.* 444. — In the month of *July* 1725, *D. H.* and *M.* his wife, and *W. H.* their son, went from *W.* with a CERTIFICATE to *C. A.*, where they lived until about *Christmas* 1728, when the father of the said *M.* died intestate, whereby she became possessed of a tenement and two acres of land, of the value of 6*l.* 17*s.* a-year, in *C. A.* for the remainder of a term of ninety-nine years, determinable on the death of the said *M.*: the said *D.* and *M.* his wife, and *W.* their son, then about five years old, entered upon and lived in the said tenement from that time until the order of removal was made; but no administration was ever granted to any person of the estate and effects of *M. H.*'s father: *W. H.* the son lived with his father and mother in the said tenement till about eight or nine years ago, when he married *M.* the present pauper, his now widow, and by her had the four children now removed: *W.* after the marriage with *M.* the pauper, lived with his wife and children in the parish of *C. A.*, separate and apart from his father and mother, until his death, which happened about a year and a half ago; but it was not stated that he had during his lifetime gained any settlement for himself.—LORD MANSFIELD: The term *emancipation* has been much made use of; but "*emancipation*," in the case of settlements of poor persons, is a vague term, and not applicable to the subject. The children of all parents must have the settlement of the father till they acquire one for themselves. (*a*) Here the son is not stated to have acquired one of his own; therefore he had such as he derived from his father; and his father had gained one in *C. A.* There is no ground here to say that the son *must necessarily* be taken to have left his family before the time

(*a*) See Lord Kenyon's judgment in Rex v. *Stanwix*, *post*.

that the father acquired a full and complete settlement in *C. A.* for himself; and therefore I think the Sessions order, which fixes the pauper upon *C. A.*, ought to be confirmed. — DENNISON J. There can be no doubt, that as *D. H.* gained a settlement by this estate, his son will do so too; for the children derive their settlements from the father. — WILMOT J. The word *emancipation* is improperly applied to cases of this kind, and has been used in a vague sense upon these occasions. It is a term taken from another law, and in that law has a determinate meaning; but here it has been misapplied. — FOSTER J. was absent.—The original order of two justices was quashed, and the order of Sessions affirmed.

62. *Rex* v. *Walpole St. Peter's, in Norfolk* (*a*), *E.T.* 9 *G.*3. *Burr. S. C.* 638. — *H. S.* the pauper was *born* at *L.*, about *Michaelmas* 1740, where his *father* then occupied a farm of about 50*l.* a year, which he occupied about four years and a half. The pauper then removed, with his father and family, to *E.*, to a farm which his said father rented and occupied *there*, of about 100*l.* a year; which farm he occupied eight years; during all which time he continued with his father as *part of his family*. From thence he removed, with his father, to *L.*, to an estate which his said *father purchased* there, at the price of 60*l.*, where he continued with his said father, as *part of his family*, for one year. From thence he removed with his father, as part of his family, to *O.* in the said isle, to a farm which his father rented and occupied there, of about 60*l.* a year; and continued there about a year and a half; and then he let himself as a hired servant, for a year, to *M. M.* of *P.D.* in the said isle, farmer; in which service he continued about six months, and then *went back* to his father at *O.*; with whom he continued to live, *as part of his family*, for about three years; when he *listed* himself for a SOLDIER, and continued in the service four years; when he received his discharge at *Corke* in *Ireland*, in the beginning of the year 1764, between *Candlemas* and *Lady-day*. About three months after his discharge, he came home to his father, who then lived at *W.*, and rented and occupied there a farm of about 50*l.* a year; and continued with his father there about 12 or 14 weeks; and afterwards worked at different places as a labourer. About *Candlemas* 1767, he married; and then went, with his wife, to his father's at *W.*, maintaining himself and his wife by his labour, till the *Lady-day* following. He then went, with his wife, to a cottage at *W.*, which he rented and occupied at thirty shillings a year, but was never charged to nor paid any parish rates there, and there continued till *Lady-day* 1768. He afterwards employed himself as a labourer, at different places, till the month of *December* last, when he was removed from *Wisbech* to *W.*; and *never gained a settlement* by any act of his *own*. — MR. BLACKSTONE contended, that the pauper's legal settlement was at *O.*, which was the place of his father's settlement at *the time* of the pauper's leaving his father's family; and, consequently, the pauper's own derivative settlement. The son, by enlisting himself for a soldier, and continuing four years in the service, became *emancipated* from his father's family; and not having gained any subsequent settlement for himself, must resort to his old derivative settlement at *O.*; and could not, after such an emancipation from his father's family, gain a settlement at *W.*, where his father had

If a son enlist himself as a soldier, he thereby *emancipates* himself from his father's family, and therefore cannot change his derivative settlement by parentage for a new settlement subsequently gained by his father. S. C. 1 Bl. Rep. 669.

(*a*) *See Rex v. Hardwick, post*, pl. 82.

newly and subsequently gained a settlement, but had none there when the son left him and ceased to be part of his family. If he had been examined concerning the place of his legal settlement, he must have declared it to be at *O.*, for he could not be supposed to know any thing of his father's having gained any other settlement subsequently to his quitting his family. He cited two cases, to prove, that if a grown-up son do not remove with his father, he can gain no settlement in the place to which his father removes, by virtue of his father's gaining a settlement there. (*a*) He obtained a rule to show cause; which was afterwards made absolute, upon an affidavit of service, without any defence.

A son who at fifteen years of age binds himself apprentice, serves out part of his time, and works about the country in the way of his business, but who goes to his father's house whenever he pleases, keeps his holiday clothes there, and considers it as his home, is not *emancipated* from his father's family. Rex *v.* Woburn, 8. T. R. 479.

63. *Rex* v. *Halifax*, *E. T.* 15 *G.* 3. *Burr. S. C.* 806. — *J. B.*, the father of the pauper, went with a certificate in the year 1733 from *S.* to *H.*, where the pauper was born: when the pauper was about fifteen years of age he bound himself an apprentice, by indenture, to *W. S.* of *H.*, stuff-weaver, for the term of *four* years; and served his master there for *that* time. Immediately after the expiration of the said four years, his master delivered up the indenture to the pauper, who was then about *about nineteen* years old; and his *father*, who had then taken a *farm of* 12*l. per annum* in *W.*, made a supper on account of the expiration of the apprenticeship; to which supper the master, and the person who had prepared the indenture, were invited. The *father resided* upon the said farm of 12*l. per annum* in *W.*, with the rest of his family, *ever since:* The pauper, after the father went to *W.*, *worked about the country* as a stuff-weaver; but came to his father's house in *W.* whenever he pleased; and *kept his holyday clothes* there; and considered his father's house *as his own home*, till he was *about twenty* years and nine months old; when he married: when he came to his father's house, he *paid for what he had*, and was his *own master* to go and work for himself wherever he pleased. — THE COURT thought that the son could not be considered as emancipated, or independent of, or separated from his father: he went to his house when he pleased, and had clothes there. — The order removing him to *W.* was confirmed.

Nine or ten year's residence of a child by the direction of his father in a friend's house for the purpose of his support, is not, if he occasionally visit his father's house as his home, such an absence as will, upon the principle of abandonment, be considered *an emancipation*, and thereby

64. *Rex* v. *Tottington Lower End*, *E. T.* 23 *G.* 3. *Cald.* 284. — The pauper, *E. H.*, was the son of *T. H.*, who at the time of the pauper's birth was settled in the township of *T.* When the pauper was seven years old his mother died; and he and his father went to live with the pauper's uncle, *E. H.*, in the township of *P.* in the same county; the father boarded; but the uncle, out of charity to his brother, the pauper's father, who had four other young children, and in order to keep him off the town, *took the pauper*, and provided for him meat, drink, lodging, and clothes. In about eighteen months the father went to reside in *R.*, a township adjoining to *P.*; but the pauper continued with his uncle till he was ten years old; about which time the pauper and his uncle's wife (the uncle being from home) having a quarrel, in which she beat him, *he went to his father's house*, and stayed there about a fortnight; but the father not having a loom to accommodate him as a weaver, *desired him to return* to his uncle: he accordingly did return, and the uncle taught him to weave in the day, and sent

(*a*) The two cases here alluded to were the parish of Eastwoodhey *v.* *Westwoodhey*, *ante*, pl. 57. and the parish of St. Michael *v.* St. Matthew Ipswich, *ante*, pl. 58.

him to school in the evenings: the uncle provided him with meat and clothes, and received the money he earned: the pauper stayed with the uncle on these terms until he was sixteen years of age: but, from his first going with his uncle, to that time, he now and then went to see his father at a holyday time or so; and one *Christmas* he stayed all night, and did so on other nights. When the pauper was fourteen years old, his father came into the township of *P.*, and gained a new settlement there by renting a tenement of 15*l.* a year: the pauper considered his father's house as his proper home, because he was his father; and that he could have gone to him when he pleased, and his father would have received him. The father thought himself obliged to provide for the pauper, whenever the uncle turned him away: and when the pauper was sixteen years of age, having been struck by his uncle, *he told him he would leave him and return home to his father;* the uncle said he might: upon which *he went* to his father, and told him the circumstances; the father said, he was like to take him in, and *did receive him as part of his family:* the father was then beginning to get his hay. The pauper lived with him as one of the family, and assisted him in making hay until it was got in, which was about a week; and expected to have lived with him end-way: but, when the hay was got in, the father told the pauper he had no loom to accommodate him as a weaver, and *desired him to return* to his uncle and see if he would take him in. The pauper returned, and agreed with his uncle to work for himself, and pay for his board; and it did not appear to the Court of Quarter Sessions, that the pauper ever returned to his father. Some time after the pauper's last return to his uncle, the pauper having taken 2*s.* 6*d.* or a greater sum of his uncle, the pauper's father gave the pauper's uncle 2*s.* 6*d.* as amends for the same. The pauper had done no act whatever to gain a settlement in his own right: the father said that if the uncle had gone to live at a great distance from him, he would not have suffered the pauper to have gone with him. — LORD MANSFIELD: The pauper considered himself as part of his father's family, and the father considered him in the same light. There is no reason to say that *this boy* was not part of his father's family. The uncle was under no obligation to do any thing for him, or to keep him an hour; and the boy, in point of fact, on every disagreement went to his father's house as his home; and he received him, as he was bound to do. I see no ground for considering this an emancipation. — WILLES and BULLER Js. concurred.

prevent his following his father's settlement. The *age of nurture* has no relation to the doctrine of *emancipation.*

65. *Rex* v. *Stretton*, *H. T.* 25 *G.* 3. EDITOR'S *MSS.* — *W. C. G.* his wife, and *S.* and *A.* their children, were removed from *D.* to *S.* The Sessions confirmed the order, and stated, That the pauper's father, several years before the pauper's birth, came to the parish of *T.* under a certificate from *S.*: the pauper, when he was about the age of thirteen, was hired by his father to Mr. *Harris* of *F.* in the parish of *H.* for fifty-one weeks, which he served; after which he was hired to *Hannah Eyre* of *O.* in the county of *L.* for fifty-one weeks, which he served; and was then hired to *Brown* of *C. K.* in the said parish of *T.* for another fifty-one weeks, which he served. At the expiration thereof the pauper made some sort of agreement with *Brown*, without the knowledge of his father, to *serve him for another* fifty-one weeks;

A boy hired out by his father several years successively, and never living with him, the father receiving the wages, is not *emancipated*, but continues to follow the father's settlement acquired after the hiring out. S. C. Cald. 487.

but the father, being informed of it, applied to *Brown*, and said his son should not serve him unless he would raise his wages. *Brown* agreed to give him five shillings a-year more, and to allow the pauper half a strike of wheat for the payment of his washing; and then paid the father the earnest-money. The pauper continued in his service all the second fifty-one weeks, except a fortnight or three weeks, when being ill, he went to his father's, and, when he recovered, immediately returned into *Brown*'s service. He was afterwards hired by his father to *J. M.* of *Clifton*, for fifty-one weeks; but served him only a month. The father received all the wages (except what the pauper himself received from his master for pocket-money), and found him clothes therewith: and during the time the pauper continued at *Brown*'s he was washed at his father's. The pauper, when removed, was about nineteen years of age, and never lived with his father after the first hiring to Mr. *Harris*. The pauper was first hired to *Brown* at *Michaelmas* 1780. His father, at *Lady-day* 1781, took lands of the value of 10*l.* *per annum* and upwards, which he rented one year, and all that time continued to reside in the parish of *T.*—BALGUY, in support of the order: The question is, Whether the pauper was part of his father's family at the time he rented 10*l.* a year? It is clear that the son shall partake of the last settlement his father had before the emancipation. This boy was hired out by his father five years successively, and lived away from him. After the first hiring, he never was, in fact, part of his father's family: at the time of the renting he was servant to *Brown*; the father had no authority over him: if he had eloped, the complaint must have been made by *Brown*: if any body had beat him, and disabled him, *Brown* must have brought the action for loss of service: the case of *Rex* v. *Walpole St. Peter's* (*a*) is very applicable; for there, as here, the pauper had been absent four years. As to the case of *Rex* v. *Halifax* (*b*), that case is very distinguishable from the present; for the boy returned to his father as having no other home; and Mr. Justice *Aston*, in a manuscript note, says, that in all the cases of emancipation the son was either married or had a home elsewhere.—LORD MANSFIELD (without hearing the other side): You have omitted to take notice of the most material part of this case, viz. that he was let out by the father, who received his wages, and washed for him.—BULLER J. *Rex* v. *Walpole* and all the cases say, that the pauper hired himself, for which purpose he must be *emancipated*, for it means *set at liberty*, and that can only be by the joint consent of father and son: the father here exercised his authority in every instance; when the last agreement was made, the father actually hired him: when the pauper made a bargain with *Brown*, the father said, "*No*, he shall not serve you "unless you give more wages," and the father received the wages. —Orders quashed.

(*a*) *Ante*, pl. 62.

(*b*) *Ante*, pl. 63.

See the case of Rex *v.* Tottington Lower End, *ante*, pl. 64.

A child separated from her father by being maintained several years in the workhouse is not emancipated.

S. C. Cald. 498.

66. *Rex* v. *Broadhembury*, *H. T.* 25 *G.* 3. EDITOR'*s MSS.*—*A. T.* a single woman, was removed from *B.* to *O.* The SESSIONS quashed the order, and stated: That the pauper's father, *R. T.* had gained a settlement by renting an estate of 70*l.* *per annum*, in the parish of *B.*, during which time the pauper resided there with him. Afterwards the father, being reduced in circumstances, was obliged to give up the farm: before which time the *pauper, when* at the age of ten years, had the misfortune to be

rendered incapable of work by her hands being burnt off. The father continued to live in *B.* in a small cottage for about two years; and being unable to maintain the pauper, procured her to be maintained by the parish: she was accordingly placed in the workhouse, being then 20 years of age. She remained in the workhouse till the order of removal, never having again returned to her father. In the beginning of 1783 the pauper's father left *B.* and went to *O.* and took an estate of 23*l. per annum*, and resided thereon till *Lady-day* 1784, when he took another estate of 20*l.* a year in the same parish, where he resided ever after occupying both. — BEARCROFT and CLAPP showed cause: They said, this amounted to an emancipation of the pauper before the father gained a settlement in *O.* Emancipation meant only such a separation of the child as to amount to a ceasing of all dependence on the parents; and took place whenever the separation was accompanied with an intent that the child should have its liberty. No circumstance could more strongly separate the pauper from her father than his inability to maintain her, and his request to the parish to take care of her, which they did for several years. It is certainly not necessary to emancipation that the child should have gained a settlement of its own. Other circumstances occur in the different cases, but none of them are essential. Marriage is not an emancipation, nor having a separate house of his own. Whenever there is an end of protection and maintenance on one side, and of subjection on the other, the child is no longer part of the father's family. The pauper is, in fact, 24, and appears of age in the case. — LORD MANSFIELD: There is *no* colour for it: it is nothing like an emancipation. The child is not even in service. The only act of emancipation is the parish keeping her in the workhouse; but the father was very poor, and being unable to keep her, she goes to the parish, and they maintain her in his stead. — ASHHURST and WILLES Js. were of the same opinion. — BULLER J. I believe I pay the poor's-rates for one of these parishes, and therefore I give no opinion upon it. — The orders were quashed.

A son who leaves his father's family when only five years old, and lives with different relations till ten, is not *emancipated*, but shall follow the settlement of his father, if he has not gained any settlement in his own right.

67. *Rex* v. *Offchurch*, *H. T.* 29 *G.* 3. 3 *T. R.* 114. — *J. W.* the *father of* the pauper *H. W.* in *January* 1765, and for the two next following years, rented and resided upon a tenement of 100*l.* a year in *O.* and was settled there. In *January* 1767 the wife of *J. W.*, who was mother of *H. W.* the pauper, died; and in *June* 1767 *J. W.* married again with one *J. L.* with whom he lived in *O.* until the year 1770, when they both went to, and resided at *S.* in the said county for three years, without doing any act to gain a settlement there. In 1773 they removed to *L.* in the said county, to a *house* vested by a settlement in trustees to the separate use of the wife. *W.* and his wife lived in the house from 1773 to the present time. The pauper *H. W.* was born in *O.* in *January* 1765, and resided there with his father until 1770. On his father's leaving *O.* the pauper was left with one *Leeson* at *O.* to be taken care of; his father paying for his lodging and board. The pauper continued at *Leeson's* at *O.* for two years, and then went to, and resided with, his uncle *Haddon*, who also lived at *O.* and continued to reside with his said uncle for about two years; during the whole of which time his uncle provided him with board, clothes, lodging, and pocket-money, and he worked *with his uncle Haddon*; but he

received no wages, and was not hired as a servant. At the end of two years the pauper went to his father's at *L.* and stayed there a week, and then went to reside with another uncle, *Salmon* of *Weston*, with whom he lived six years, as he had done at his uncle *Haddon's*, his uncle *Salmon* providing him with board, clothes, lodging, and pocket-money; he working for his uncle *Salmon* without having been hired as a servant, or receiving any wages. On leaving his uncle *Salmon*, he went and lived three weeks with his father at *L.* The pauper had never done any act to gain a settlement.—LORD KENYON C. J. This is the weakest case of *emancipation* that was ever attempted to be made out. When the father left the parish of *O.* the son was only five years old: now it cannot be pretended that at that time he was emancipated, and yet he then ceased to reside in his father's family. It is also stated, that about two years afterwards, when he was about seven or eight years old, and past the age of a nurse-child, he went to live with his uncle *Haddon*. Then, Was he emancipated at that time? Ordinarily speaking, one of these things must happen before the son can be said to be emancipated: either he must have obtained a settlement for himself, or have become the head of a family; or, at most, he must have arrived at that age when he may set up in the world for himself. But here the son does not fall within either of those descriptions: no time can be stated when the emancipation may be said to have commenced. For when he went to live with his uncle *Haddon*, he was only eight years old at the most; and he could gain no settlement either by living with that uncle, or his other uncle *Salmon*, as a servant, because the case states that he was not hired as a servant by either of them. Now during all this time the father had a right to the custody of the son, and might have obtained him by *habeas corpus;* for the parental care was not then done away. It is not necessary in these cases of derivative settlements that the child should remove with the father from place to place; for the settlement of the father will be communicated to the child; otherwise children, who are sent out into the world for education, and are of course separated for a time from the father, might lose the benefit of their father's settlement, and when they were about to return home, would find themselves excluded from parental care, if their parents had in the mean time gained a new settlement. How long the power of communicating a derivative settlement may continue, it is not necessary to determine; for in this case it certainly remained longer than till the child was nine or 10 years old; and that is sufficient for the determination of this question.—ASHHURST, BULLER, and GROSE Js. assented.

A son who when sixteen is bound apprentice by a void indenture for four years, which he serves, and never afterwards returns to his family; is not *emancipated*, but follows the father to a new settle-

68. *Rex* v. *Edgeworth*, *T. T.* 29 *G.* 3. 3 *T.R.* 353.—*H. R.* the father of *H.* the pauper [not having a settlement at *E.*] when *H.* the son was about 13 or 14 years old, came to live upon a tenement at *E.* called *H.* of the yearly value of *5l.*, and resided there about two years; during which time *H.* the father put out *H.* the pauper an apprentice by indenture, but which indenture was void for want of a stamp, to one *J. P.*, then residing in the township of *S.*, for four years, to learn the trade of a wool-comber. The pauper *H.* accordingly left his father's house, to which he never afterwards returned but as a guest, and resided with and worked for *P.* at *S.* for the four years; and by him was provided all that time with meat, drink, washing, lodging, and clothes; and

was considered by his mother as part of *P.*'s family. During those four years the pauper was sometimes a quarter or half a year without seeing his father or mother, on which occasions he came to his father's at *H.* on a *Saturday* evening, and returned home to his master's either on the *Sunday* evening or *Monday* morning following. After the expiration of the four years he never returned to his father's family, but worked at his trade of a wool-comber at different places about the country, and supported and maintained himself thereby, until he afterwards married, and resided with his wife and family in a house of his own. After the pauper was put out to *Pollitt*, and before the four years expired, *Henry* the father took another tenement in *E.* of the yearly value of 8*l.*, which he occupied with the former tenement called *H.* for a year, whereby he gained a settlement at *E.* The pauper never gained any settlement for himself; and the question was, Whether he followed his father's settlement at *E.*?—THE COURT were clearly of opinion that the pauper was not *emancipated*, but that he was entitled to his father's settlement in *E.*, and therefore the order removing him to *E.* was affirmed.

ment, gained while he was serving under the indentures.

69. *Rex* v. *Witton cum Twambrookes* (*a*), *T. T.* 29 *G.* 3. 3 *T. R.* 355. — The pauper's father, *J. H.* rented a tenement of 16*l.* a year in *W.* and resided upon it above a year, when the pauper was about six years old. *J. H.* then went to *M.*, where he did no act to gain a settlement, and about two years after ran away from his family; and the pauper's mother taking the pauper with her to *C.*, died in half a year, when the pauper was left in the care of one *Brookes*, with whom he lived at *C.*, and worked at the silk-mills there: and the overseers of the poor of *W.* paid the whole or a part of his maintenance for four years to *Brookes*, after which period the pauper supported himself till the age of 16; at which time he got 3*s.* 9*d. per* week, and boarded himself where he liked. During the first part of the time he lived at *C.* he saw his father twice at the distance of about four years, at which times his father did not give him any thing (except a pair of breeches, and two pence halfpenny the first, and only three halfpence in money the second time). At 18 or 19 years of age the pauper went from *C.* to *S.*, and hired himself for four years, by which hiring however he gained no settlement. He heard that his father had been to inquire after him at *C.*, and that he then lived at *D.*, to which place the pauper went to see him, and was at that time 23 years of age, and married; it appeared that the father had made such inquiry as above mentioned after the pauper from his daughter (the pauper's sister) with intent, as he said to give him a suit of clothes, as he had done less for the pauper than any of his children. It appeared that the father *J. H.* had married a second wife, and held a tenement in *D.* of 11*l.* a year, and had lived upon it eight years when his son went to see him there as above; upon which visit he stayed only one hour, and never saw his father at any time but as above. — LORD KENYON C J. It was never conceived in any case that a son who was only 16 years of age, and who had not gained any settlement in his own right, was not part of his father's family. The cases of emancipation have always been decided

A child is not *emancipated* so as to lose the benefit of any settlement which his father may gain until he *comes of age*, or *marries*, or till he has *gained a settlement in his own right*, or till he has contracted a relation inconsistent with the idea of his being part of his father's family.

(*a*) See Rex *v.* Uckfield, *post*, pl. 79. Rex *v.* Huggate, *post*, pl. 80. Rex *v.* Wilmington, *post*, pl. 83.

on the circumstances either of the son's being 21 (*a*), or married (*b*), or having gained a settlement in his own right, or, as in the case of the soldier (*c*), having contracted a relation which was inconsistent with the idea of his being in a subordinate situation in his father's family. — BULLER J. In this case the pauper remained under the power (*d*) of his father the whole time.

The son of a certificated person who leaves his father's family at nineteen years of age, and serves a year under a hiring in an extraparochial place, and at the end of the year returns *unmarried* and *under age*, and not having gained *a settlement in his own right*, to the parish where his father lives under the certificate, and there enters into service, is not thereby *emancipated*.

Rex *v.* Ingworth, *post*, pl. 73.

See Rex *v.* St. Andrew, Holborn, *post*.

(*c*) *Ante*, pl. 69.

70. *Rex* v. *Collingbourn Ducis*, *H. T.* 31 *G.* 3. 4 *T. R.* 199. — The pauper *E. C.* was born in *C.*, when his father and mother were residing there under a certificate from *F.* At the age of 19 he was hired for a year to serve *T. C.* of *Buckholt* as a carter, which he served accordingly. *Buckholt* is extraparochial; is not a township or vill; and has no parish officers. After the pauper had served the year at *Buckholt*, he returned to *C.*, and then, being unmarried, under age, and not having done any act to gain a settlement in his own right further than as aforesaid, he was hired to, and served, *Andrews* of that parish for a year. — LORD KENYON C. J. It is extremely clear, that if the pauper had served a year under a yearly hiring in *C.* before he went to *Buckholt*, he could not thereby have gained a settlement in that parish while the certificate was in force, on account of the statute of *William*. It is equally clear, that if *Buckholt* had not been an extraparochial place, his service under the hirings stated in the case would have discharged him from the protection of the certificate in *C.*; because then the certificate, which asserted that he was settled in *F.*, would not have been true in fact, inasmuch as it would in that case have been superseded by a subsequent settlement. But *Buckholt* not being a parish wherein a settlement could be gained, the question is, Whether by any and what means the certificate as to this pauper was discharged? In cases of this kind, where the decisions of this Court are to guide the judgments of the magistrates, it is of great importance that they should be consistent. Now I am not able to distinguish this case from the principle laid down in *Rex* v. *Witton cum Twambrookes*. (*e*) It was there held, that a person under age, who after being absent from his father's family for a considerable time returned to it before he was an adult, or married, and before he had acquired a settlement for himself, was not emancipated, but was entitled to the benefit of his father's settlement. So in this case the son returned before he had attained the age of 21, not having gained any settlement for himself distinct from that of his father, nor having become the head of a family; and therefore this case must be governed by that of *Witton cum Twambrookes*. The distinction which has been attempted to be taken between some of the former cases and the present, that here the son put himself out to service, is not material; for till the age of 21, not having done either of the acts above alluded to, he continued a part of his father's family. — ASHHURST and GROSE Js. of the same opinion. — BULLER J. was absent. (*g*)

(*a*) Bugden *v.* Ampthill, *ante*, pl. 60. and see as to this point Lord *Kenyon's* observations in Rex *v.* Roach, *post*, pl. 72.

(*b*) But see Rex *v.* Cold Ashton, *ante*, pl. 61.

(*c*) Rex *v.* Walpole St. Peter's, *ante*, pl. 62.

(*d*) Vide Rex *v.* Offchurch, *ante*, pl. 67.

(*g*) Vide Rex *v.* Broadhembury, *ante*, pl. 66.

A son, who at the age of 19, enlists in the army, goes abroad as a soldier, marries, and absents himself from his father's family for several years, is thereby *emancipated*, and though he never acquires a settlement in his own right, cannot partake of a settlement gained by his father, subsequent to his inlisting and leaving his family.

71. *Rex* v. *Stanwix*, *T. T.* 34 *G.* 3. 5 *T. R.* 670.—*J. C.* was the widow of *A. C.*, a *Scotsman*, deceased. The pauper *I.* was the widow of *W. C.* also deceased, which *W.* was the legitimate son of *A.* and *J.*; and the five children named in the order were the legitimate children of *W.* and *I.* *A.* became seised of a messuage and tenement at *H.* in *S.* by descent, upon which he resided upwards of a year in or about the years 1774 and 1775. Sometime before and until the premises at *H.* descended to *A.* he resided at *Glasgow*, where *W.*, at or about 19 years of age, and some years before the premises at *H.* descended to the father, enlisted into the army, and left his father's family at *Glasgow*. *W.*, after having been at *Gibraltar* and other parts beyond the seas as a soldier, returned to *Great Britain* about 13 years ago (his father being then dead), and married the pauper *I.* at *Plymouth*. *W.* went beyond seas again as a soldier, and at the end of two years returned again to *England*, and about 10 years ago he came to *R.*, an adjoining township to the parish of *S.*, where he lived six years, and then removed into the said part of the parish of *St. Mary's*, where he lived four years, but never acquired any settlement in either of those places or elsewhere by any act of his own. *A.* the father sold part of the estate at *H.* in his life-time, and resided upon the residue of the estate, consisting of a house and garden of the yearly value of 2*l.* 5*s.* till his death; which premises he devised to *J.* his wife for her life, and after her death to *W.* his son, his heirs and assigns for ever. But *W.* never became possessed thereof, nor resided thereon, having died in the life-time of *J.* his mother; who after her husband's death continued to reside upon the premises for several years, when she removed to her son in the said part of the parish of *St. Mary's* about four years ago, and continued to live with him there till his death, and afterwards with his widow till the death of *Jane* in *January* last.—BEARCROFT cited *Rex* v. *Clifton* (*a*), *St. Giles's, Reading*, v. *Eversley Blackwater* (*b*), and *Rex* v. *Cold Ashton* (*c*), where it was said that a child cannot be emancipated from his parents, unless such child has gained a settlement of his own; for that until that time the derivative settlement of his parents is not abandoned.—LORD KENYON C. J. That means as long as the son continues a part of his father's family. But here the son was emancipated when the father acquired a settlement in *Stanwix*: he had ceased to be a part of his father's family for some years before, and had put himself under the control and government of others; and it is immaterial whether or not he had gained a settlement for himself. The case of *Rex* v. *Walpole* (*d*), where the son had enlisted himself as a soldier, was considered so clearly to be the case of an emancipation that it was not even argued.

(*a*) *Ante*, pl. 38.
(*b*) *Ante*, pl. 39.
(*c*) *Ante*, pl. 61.
(*d*) *Ante*, pl. 62.

A daughter of 22 years of age, who leaves her father's house, and hires herself in the same parish as a *wet nurse*, she having recently had a bastard child which was kept by the parish,

72. *Rex* v. *Roach* (*e*), *E. T.* 35 *G.* 3. EDITOR's *MSS.*—The Sessions confirmed an order of two justices, for the removal of *E. Rounsavel* from the parish of *St. C.* to that of *R.*, and stated the following case: The pauper was born in the parish of *L. C.* where her father then resided: when she was 12 years of age, her father rented some grist mills of the value of 14*l.* a year in the parish of *R.*, and resided there with his family for several years. The pauper constantly lived with her father from her birth, and attained her age of 21 whilst living in *R.* When

(*e*) See *Rex* v. *Cowboneyborne*, *post*, *pl.* 77. *Rex* v. *Rotherfield Greys*, *post*, pl. 84.

receives a shilling a week as wet nurse, and, after staying only *eight weeks* in her place, returns to and continues with her father's family, is thereby *emancipated*; and though she has gained no settlement in her own right, is not entitled to a settlement gained by her father between the time of her departure and her return.

S. C. 6 T. R. 247.

she was 22 years old, she was delivered of a bastard child, for the maintenance of which a bond of indemnity was given to the parish officers of *R.*; and she continued to live with her father. About half a year afterwards she left her father's house, went to Mr. *H.*, a farmer in the parish of *R.*, as a wet-nurse to his child, and lived there eight weeks, for which she was paid eight shillings. A few days after the pauper left her father's house, he removed with his family to *St. C.*, where he rented some grist mills at 12*l.* a year, and lived thereon from that time. At the expiration of the eight weeks the pauper quitted the house of Mr. *H.*, and went to her father's in *St. C.*, where she remained, but never made any contract with him as a servant, nor gained any settlement for herself, except as aforesaid.—LORD KENYON C. J. I hope that the decision I am about to make falls in with every case that has been cited. I have looked into them all—they are got together in a very judicious compilement by Mr. *Const*; they lie there side by side; one looks into them there, and goes regularly through them. I am ready to believe that the mistake, if there be a mistake in what is reported to have been said by me in the case of *Rex* v. *Witton cum Twambrookes*, cited from Mr. *Const*'s book, was rather my mistake, than the mistake of the very accurate person who reported it. I think if this case had arisen, I should have laid it down with a little limitation. I should not have said that attaining the age of 21 put an end to the settlement which the child derives from his parent. I certainly always thought otherwise. I certainly think otherwise now, provided the child remains at that time, with an unbroken continuance, a member of the father's family. But I think one may lay down this as a proposition that will not break in upon any case—which is supported by some cases, and which, if allowed to be the fair position, will reconcile all the cases; viz. that so long as a child is in a state of pupilage to the father on account of its tender years, if the child go out *quasi* servant from the father's family, and return to the father's family while a minor, the child shall then be re-incorporated into the father's family, if it has not gained a settlement distinct from the father, and become the head of a family itself. But no one case, as far as I can find, has laid it down as a rule, that if a child, after it is out of the state of pupilage, sever itself from its father's family, it can ever be re-incorporated into the father's family. In the case of the soldier (*a*), he became liable to a different control, and it was looked upon so clear that he was not re-incorporated into the father's family, that it was not a point argued; but it is not therefore to be inferred, that the gentleman who argued that case, did not consider it. Mr. Justice *Aston*, who was a very able sessions lawyer, looked upon that case to be properly decided. If that case be properly decided, I cannot distinguish it from this. Mr. *Caldecott* lays stress upon his being a soldier; I cannot see that that signifies. This young woman was above the age of 21; she contracted the relation of servant in another family; she was out of the control of her father; and I do not see how she could, after the age of 21, be deemed to be re-incorporated into her father's family. If a child be separated from the father's family, and obtain no settlement inconsistent with that of the father's family, and returns to the *father's family*, and is re-incorporated within the age of 21,

(*a*) Rex *v.* Walpole, *ante*, pl. 62.

her settlement shall be the settlement of the father, and the reason is that she may have protection from her father. It would be a cruel thing to separate her from her father's family, which might be the case, if she had a settlement elsewhere, when she had been re-incorporated into her father's family; but when the time comes, when, in the estimation of law, the child wants no longer the protection of the father, and she is removed from the father's family, she is not to be re-incorporated into her father's family. That I think reconciles every case, and lays down a rule I hope intelligible.—ASHHURST J. In some cases perhaps it may be difficult to say what shall amount to a severance from the father's family. When a child becomes of age, it is optional in him either to continue with his parents or not as he pleases. He is then *sui juris*; and if he leave his father's house and put himself under some other control, this is a kind of public notification that he means to leave his father's family; and if afterwards the father acquire a new settlement it cannot be communicated to the son, because he has ceased to be part of his father's family. In the present case, the pauper was clearly severed from her father's family, when the father gained a settlement at *St. C.*, and consequently she is settled at *R.* where the father was settled before.—GROSE J. The question here is, Whether the pauper is to be considered as part of her father's family? Several cases have been cited on this subject, though I think that there is not one that comes directly up to the point before us. Some cases have happened on the marriage of the son, and those have been properly considered as a separation from the father's family; others have been decided on the son's gaining a settlement for himself. But here the daughter, being no longer in a state of pupilage, left her father's house, and went out into the world in service, and the question is, whether that amounts to an emancipation. The case of the soldier was decided on this principle. Then the present case is resolved into this: Is this the case of a child going out into the world intending to separate herself from her father's family? Being of the age of 22 she went into another family in the situation of a servant, and I consider the case as stating that she was hired into that family; for she received wages, and if she had continued as a wet-nurse for a year, it would have furnished evidence of a general hiring, and then she would have gained a settlement. Had she thus served for a year, we should have considered that she was severing herself from her father's family; and her intention of so doing cannot be varied by her not having served for the period of a year. Whether in a particular case the leaving of the father's family amount to a severance of the child from the parents is more a question of fact than of law, it depending on intention. Strictly speaking, the Sessions should have found that fact; but they have stated nearly the same thing by determining as they have done; for they have in effect decided that the pauper intended to leave her father's family. And then this case comes within the principle of the soldier's case.—LAWRENCE J. In the case of the soldier, the son was enlisted when he was under age, and if he had returned home before he was 21, he would have been considered as part of his father's family, or if he had quitted the army before 21, without returning home, the *father might have reclaimed him* by suing out

a *habeas corpus*: but it appears from the case that he had attained the age of 21 before he left the army; therefore during the time that he continued a soldier his father lost all control over him, he being of age; and the subsequent settlement gained by the father was not communicated to him. Now that principle will govern this case: here the daughter being of age put herself out of her father's control, and therefore she ceased to be part of his family; he could not recall her. If by being a soldier after the son was of age he by that ceased to be under the control of his father, in this case by the pauper's putting herself from under her father's control after she had attained 21, the relation between her and her father's family ceased. If after such a service as this, the daughter had returned to her father before she was of age, she would have continued as part of her father's family; but not returning till after, she can no longer be considered as part of his family. This rule is perfectly intelligible, and there will be no difficulty in adopting it in future.—Order of Sessions confirmed.

If the son of a certificated person serve a year under a yearly contract in the parish granting the certificate, and then return under age to the father's house for a short time, and then serve another year with another master under a yearly hiring in the certificated parish, he does not gain a settlement in the latter parish.

73. *Rex* v. *Ingworth* (*a*), *M. T.* 40 *G.* 3. 8 *T. R.* 339.—In the year 1781, *S. Slaughter*, the father of *S. Slaughter* the pauper, went with his wife and *S. Slaughter* the pauper as part of his family, to reside in the parish of *I.* under a certificate from the parish of *E.* In the year 1787 the pauper, then of the age of 16, let himself to *J. B.* of *E.* and served two years as a yearly servant. He then let himself to *W. C.* of *E.*, and served him as a yearly servant for a year. He afterwards let himself from three days after *Michaelmas* 1790 to the *Michaelmas* following to *M. K.* of *B.* farmer, and completed his service. At the expiration of the year he returned to *I.* where his father still resided under the certificate, and lived in his said father's house about a month, during which time he worked as a day labourer at *B.* and paid his father for his board. When he returned to *I.* he did not consider himself as going with a view to the certificate. At the expiration of the month he let himself for a year to *B. N.*, of *I.* and lived in his service two years. —LORD KENYON C. J. Although the decisions in some of the cases on settlements are very nice, whenever we find a case precisely similar to the case in question, we ought to be governed by it. Now it appears to me that the case of *Rex* v. *The Inhabitants of Keel* (*b*) is exactly like the present. There indeed Lord *Mansfield* at first doubted whether or not the pauper returned to the certificated parish under the certificate, but afterwards he was of opinion that the pauper had returned under the faith of the certificate. If the pauper in this case had gained a settlement in a third parish, the reasoning in support of this order would have applied: but here is no ground for presuming, as in *Rex* v. *Newington*, that the parties had abandoned this certificate, for the pauper's father was resident at *Ingworth* under the certificate when the son returned to him.—LE BLANC J. mentioned the case of *Rex* v. *Collingbourn Ducis* (*c*), the principle of which, he said, applied to the present case.—PER CURIAM: Order of Sessions quashed.

See the observations on this case, in Rex *v.* Morley, 2 M. & S. 417. *post*, pl. 769.

(*b*) Cald. 144.

(*c*) *Ante*, pl. 70.

A drummer under age entered into the same militia in which his father *was* serjeant,

74. *Rex* v. *Woburn*, *H. T.* 40 *G.* 3. 8 *T. R.* 479.—Two justices by their order removed *T. W.* and his wife, together with their six children from the parish of *L.* to *W.* in the same county. The Sessions on appeal affirmed the order, subject to the opinion of this Court on the following case: *J. W.* the father of *T. W.* the pauper,

(*a*) See Rex *v.* Bleasley, *post*, pl. 81.

previous to the year 1756 was settled with his family in *L.* The pauper was born in that parish and baptized there in the year 1756. In 1763 *J. W.* removed with his family, of which the pauper was a part, to *W.*, and gained a settlement there in 1774. In 1772, previous to such settlement, the pauper entered into the *Bedfordshire* militia as a drummer, with the consent of his father, who was then a serjeant in the same militia; the pauper continued in the station of a drummer in the said militia until he was 23 years of age; and during such time his pay was received by his father. From the time of the pauper's entering into the militia until the year 1788, when he married, he lived in his father's family, except at the times when he and his father were absent upon duty in the militia. The pauper had gained no settlement in his own right.—LORD KENYON C. J. The justices who made this order of removal, and those at the Sessions who confirmed it on the appeal, were of opinion that the pauper was not emancipated from his father's family. The opinion of the magistrates below, however respectable, ought not indeed to be conclusive on this Court when a special case is reserved for our determination: but I am glad to find that their opinion coincides with ours and with the decision on this subject. The argument that has been used in support of the present rule, if it prove any thing proves too much; for it tends to show that if a child be for any period of time, however short, under any other control than that of the father, he is thereby emancipated from his father's family. That is the case of every private in the militia, even in time of peace; he is subject to military control during a part of the year, and, therefore, not under the father's control during that time; and yet it was not contended that such a person is by that mean emancipated. But the decisions upon this subject have put this question at rest; and it would be unfortunate for the children if the argument now pressed upon the Court were to prevail. A drummer is generally taken at a very early period of life, when he is only seven or eight years of age; and if he only continue in that situation for 24 hours, he is (it is said) emancipated from his father, he is to be taken from the protection of his father, and if the father is removed elsewhere the child is to remain unprotected; the proposition is monstrous. In the case of *Rex* v. *Walpole St. Peter's* (*a*), where it was holden that the pauper who had enlisted himself as a soldier was emancipated, the Court proceeded on this ground, that he was engaged to serve for life, and was liable to be sent into foreign countries. But a son is not emancipated by the circumstance of his being under some other control than that of his father. For in another case, *Rex* v. *Halifax* (*b*), where the son served an apprenticeship for four years during his minority, it was decided that he was not emancipated from his father; and yet during the time of the apprenticeship he was not under his father's control. In contemplation of law there may be two kinds of control; a son may be under the control of his father, and also under the control of the law, as if he be ordered to assist a constable in the execution of his duty; that is a temporary control. I am therefore of opinion that this pauper was not emancipated from his father at the time when the latter gained a settlement in *Woburn*, and that a contrary decision would be attended with mischievous consequences.—GROSE J. The question is, Whether *or not the pauper ceased to be* part of his father's

and lived with his father, the latter receiving the son's pay: Held that a settlement gained by the father during such time was communicated to the son.

See Rex v. Chelmsford, 3 B. & A. 411. *post*, pl. 536.

(*a*) *Ante*, pl. 62.

(*b*) *Ante*, pl. 63.

family in the year 1774, in deciding which, common sense will go a great way to guide us. It is said that he ceased to be part of his father's family when he entered into the militia as a drummer; but it appears by the case that he was only 16 years of age at that time, that he entered with the consent of his father, who was a serjeant in the same militia, that his father received his pay, and that from the time when he first entered until he married he lived in his father's family, except at those times when he and his father were absent upon duty in the militia. Upon this state of the case I think that he continued under his father's control, and was a part of his father's family in the year 1774.—LAWRENCE J. I do not find any case in which it has been decided that a subsequent settlement gained by the father cannot be communicated to the son, unless where the son has been actually separated from the father. In the cases cited of the soldier and of the nurse, the children were absent from the father's family; and in the latter case the daughter was an adult at the time of her absence. In *Rex* v. *Halifax*, though the son was an apprentice under the control of his master, yet as he returned to his father's house after the apprenticeship was at an end, it was holden that the father's subsequent settlement was communicated to him.—LE BLANC J. In the case of *Rex* v. *Walpole St. Peter's*, on which the argument in this case is founded, the son had totally quitted the father's family; he had been with his regiment for four years, during which time he was totally independent of the father. But in this case the pauper never ceased to be part of his father's family before the year 1774, when the father gained a settlement in *Woburn*. It is said, however, that the pauper was emancipated, because he had entered into an engagement which for a time subjected him to a control different from that of the father: but suppose, instead of this, he had engaged to live as a servant with a farmer in the neighbourhood for six months, he would during that time have been under the control of the master, but on returning to his father's family he would again have become subject to his father's control, and would not have been emancipated. So here the pauper continued to be part of his father's family in the year 1774, and as such the settlement gained by his father at that time was communicated to him.—PER CURIAM: Order of Sessions confirmed.

A son of age and married continuing to live with his father does not follow a settlement subsequently acquired by the father in another parish to which the son also accompanied him as part, in fact, of his household.

75. *Rex* v. *Everton*, *T. T.* 41 *G.* 3. 1 *East*, 526.—Two justices by an order removed *J. P.* his wife and children, by name, from *G. B.* to *E.*, both in the county of *Bedford*. The Sessions, on appeal, stated the following case: That *T. P.* the father of *J. P.* the pauper, being legally settled in *E.*, resided there from the year 1779 to 1790 with his family, of which during the whole of that period the pauper was a part. In the year 1782, the pauper being 22 years of age, married *S. B.* his first wife. The pauper and his said wife lived in the family of *T. P.* the father, and as a part thereof until her death, which happened in the year 1783. There was no issue of that marriage. The pauper never left the family of his father, but continued with him after the death of his said wife; and in the year 1790 removed with his father to *G. B.* The pauper's father afterwards, and during the time the pauper continued in his family, acquired a settlement there. And in *April* 1796, the pauper, who still continued to live with his father, married *M. R.*, by whom he had the children mentioned in the order.

That the pauper had gained no settlement in his own right.—The Sessions, being of opinion that the pauper was emancipated from the family of his father by his marriage with *S. B.*, affirmed the order of the two justices, subject to the opinion of this Court. —CONST, *contra*, said, that it had never been decided that marriage alone was an emancipation, but it was always accompanied with a departure from the house and protection of the father. On the contrary, it was considered otherwise in the case of *Rex* v. *Wingham*. (*a*) But at any rate the fact found by the Sessions was conclusive against it in this case; for it is stated that during the whole period of his marriage with *S. B.* his first wife, he was *a part of his father's family*.—LORD KENYON C. J. The Sessions could not intend more by that statement than to inform us that locally and personally the pauper lived in the same house with his father, and took his fare at the same board with him; but they wish to be informed whether that so far constituted him in point of law one of his father's family under the circumstances, as that after his marriage he would follow a newly-acquired settlement of the father; and I am of opinion that it did not.—PER CURIAM: Both orders affirmed. (*b*)

(*a*) Burr. S. C. 223.

76. *Rex* v. *Sowerby*, *E. T.* 42 *G.* 3. 2 *East*, 276.—Two justices by an order removed *R. M.* and his children by name from the parish of *St. M.*, in the town and liberties of *B.*, to the township of *S.* The Sessions on appeal confirmed the order, subject to the opinion of this Court, on the following case: *R. S.* in 1745 went with a certificate, in which he only was named, from *D.* to *S.*; and during his residence there under that certificate, his son *R. S.* was born. *R. S.* died; after whose death *R.* his son, being arrived at manhood, followed the business of a twine-spinner at *S.* for many years; and about 1780, which was 10 years after the death of his father, engaged the pauper *R. M.* as his servant in the above business; and the pauper continued in such service at *S.* for 11 years, during which period he was whilst unmarried hired to and served him for a year. *R. S.* also during these years hired a boy to turn the wheel necessary in twine-spinning. When the pauper was hired for and served a year as above mentioned, *R. S.* was a bachelor, and lived in a house at *S.* with his mother, which she went to and rented after her husband's death, at about 50*s.* a year; and he never left this house or his mother, except for a few weeks in harvest-time, in one year. The mother had no concern in the twine-spinning business; and the pauper and the boy were the servants of *R. S.*, and not of his mother. This case

A person cannot gain a settlement by hiring and service with the son of a certificated man continuing to reside in the certificated parish with his mother after the father's death, as part of her family, though the son were of age, and carrying on business for himself; such circumstances not amounting to an emancipation.

(*b*) In the case of Bugden *v.* Amptill, *ante*, pl. 72, the son after his marriage lived separate from the father, and both these circumstances formed ingredients in the opinion delivered by three of the judges. But *Wright* J. only relied on the marriage of the son, "by virtue of which he becomes "the head of his own family, which is "an independent family." The same circumstances of marriage and separation from the father's household occurred in *Rex* v. Heath, 5 T. R. 583. But in *Rex* v. Witton *cum* Twambrookes, *ante*, pl. 69, Lord *Kenyon* enumerates *marriage* without more as one of the grounds of emancipation: but the point was never expressly decided before the present case; and here the circumstance of the son's being of age forms an ingredient. But it did not appear whether any stress were laid upon it in the judgment of the Court; though probably there was, as Wilson included that fact in the statement of the question before he was stopped by the Court.

was first argued in the last term, when the Court, after hearing the counsel in support of the orders, directed them to be quashed, being clearly of opinion that *R. S.*, the son of the certificated man, continued to reside with his mother in *S.* under the certificate granted to the father and his family, and therefore that the pauper could not gain a settlement by a hiring and service with *R. S.* But a doubt being afterwards suggested from the bar, whether some cases which had not been adverted to before might not vary the consideration of the question, the matter was directed to stand over for further argument. — LORD ELLENBOROUGH C. J. The opinion which I have formed does not appear to me to clash with the case of *Rex* v. *Heath*. There, there was every thing which could well be predicated of emancipation: the marriage of the son; his living in a separate house from his father, as the head of a distinct family; and being rated by the parish as such in his own name. Here there is nothing of the kind: while the father was living, the son resided under his roof; and after the father's death he continued to reside with his mother, who was the representative of the father, and equally protected by the certificate. This comes then directly within the principle of *Rex* v. *Hampton*; where it was holden, that an apprentice to the widow of a certificated man, could not gain a settlement in the certificated parish after the husband's death. If this question had come now to be decided for the first time, I should have been prepared to decide it on the plain words of the stat. of *Anne*, referring to the stat. 8 & 9 *W.* 3. *c.* 30. and 9 & 10 *W.* 3. *c.* 11., which have been broken in upon by many cases, laying down rules of construction much less plain than the words of the statute itself. The stat. 9 & 10 *W.* 3. *c.* 11. speaks of two methods only by which any person coming into a parish with a certificate shall by any act whatsoever be adjudged to have procured a legal settlement there: those are, by taking a tenement of the yearly value of 10*l.*, or by executing some annual office within the parish. Then the stat. 12 *Ann. st.* 1. *c.* 18. *s.* 2. enacts, that "if any person shall be an "apprentice bound by indenture, or be a hired servant to any "person who *came into* (which extends to such as came into the "parish with the person certificated) or *shall reside* in any parish "by means or licence of such certificate," (which includes such persons as come into the parish afterwards, and reside under the protection of the certificate) "and not having afterwards gained "a legal settlement there," (which was in allusion to the methods pointed out by the stat. 9 & 10 *W.* 3. *c.* 11.) "such apprentice or "servant shall not be adjudged thereby to have a settlement in "such place," &c. The object of the legislature by these acts certainly was to protect the certificated parish from sustaining any new burthen by persons gaining settlements there who were residing there upon the faith of these certificates, except by one or other of the methods pointed out. I am therefore decidedly against extending the construction of the statutes further than it has been carried. Now, who can be considered as a person residing by means or licence of a certificate, if the son of a certificated man, continuing to live with his father's widow in the certificated parish, is not such a person? If, as in the *Hampton* case, the widow of a certificated man were privileged to continue in the *parish under the* certificate after his death, as part of his family, so

must his son by the same rule, who continued part of the same family. There was no emancipation in this case to distinguish it from the other; but it comes expressly within the principle of the *Hampton* case; and, what is more material, it comes directly within the meaning of the statute of *Anne*.—GROSE J. A person is within the words of the statute of *Anne* who is serving another residing in any parish by means or licence of a certificate. Now here *R. S.*, the son, either lived there as part of his father's or his mother's family during all the time: and it is not denied, that both the father in his life-time, and the mother after his death, were residing in *S.* under the certificate. There was no emancipation of the son, no taking of another house for himself, nor any thing of the sort which occurred in *Rex* v. *Heath*; and there is no pretence for saying, that his going out for a few weeks at harvest-time would operate as an emancipation. We ought to be careful not to create more doubts, by refining away the meaning of the statute and prior decisions upon the subject.—LAWRENCE J. declared himself of the same opinion.—LE BLANC J. We are now called upon to put a construction upon the statute 12 *Anne*; and as in the only case which turned on that branch of the statute, *Rex* v. *Hampton*, it was holden that the widow after the husband's death was still protected by the certificate as part of his family, and therefore that her apprentice serving her could not thereby gain a settlement in the certificated parish; so neither can the servant to the son continuing part of the same family gain a settlement there.—Both orders quashed.

77. *Rex* v. *Cowhoneyborne*, *T. T.* 48 *G.* 3. 10 *East*, 88.—Removal from *T.* to *C.*, order confirmed, subject, &c. The pauper being legally settled in *C.*, sometime after the death of his wife, who died in childbed fifteen years ago last *Whitsuntide*, went to service, and hired himself to one *Clarke* of *C.*, who afterwards removed to *T.*, and the pauper left him at *Michaelmas* 1806, having served him the five preceding years under a hiring for a year in *T.* On the death of the pauper's wife, *W. N.*, who had married his sister, took to and maintained the infant, of which she had been delivered, out of kindness to the pauper; and the pauper's daughter, *Elizabeth*, then about eleven years of age, went, with the pauper's consent, to *N.*, for the purpose of nursing her infant sister. The infant died in about a year; and from that time to this she has continued to live in the house of *N.* as one of the family, but doing the work of a servant. *N.* who, previous to the pauper's daughter living with him, kept a servant, would have hired a servant if she had left him; but he never hired her, or paid her any wages, though he found her in board, clothes, and such pocket-money as he thought fit. The said *Elizabeth* will be 27 years of age in *June* 1808. During all the time she so lived with *N.*, she considered herself as liable to be sent away whenever he pleased; and he considered her as at liberty to quit him when she chose; and the pauper considered himself, as her father, bound to receive and support her if *N.* ceased so to do. But the pauper was not a hosuekeeper at any time after he went into *Clarke's* service. The pauper's daughter, *Elizabeth*, was never hired as a servant to *Nightingale*. The question intended for the opinion of the Court was, Whether the pauper's daughter *Elizabeth* were, under the *circumstances of the case*, so emancipated, as

A widower having a daughter, placed her at 11 years of age, with an uncle by whom she was wholly maintained after that time, and with whom she continued to reside after she came of age, doing service for him, but without any contract of hiring to give her a settlement of her own; the father having in the mean time gone out to service. Held, that on her coming of age she was emancipated, although her father conceived himself bound as such to receive and support her if she left her uncle's;

and consequently the father was capable of gaining a settlement by hiring and service for a year, as "an unmarried man, *not having a child*" (i. e. not having a child who would follow his settlement) within the stat. 3 *W. & M.* c. 11. s. 7. —

to enable the pauper to gain a settlement by his service with *Clark* in *T.*, under such hiring as aforesaid. — LORD ELLENBOROUGH C. J. The daughter having been originally placed, when an infant, by her father in her uncle's family, continued to live with her uncle after she came of age as part of his family; receiving no assistance from her father, and being at liberty to depart from her uncle when she chose. She was of age, living apart from her father, having her support from sources independent of him, and was at liberty to quit her uncle when she pleased, as she herself considered. If this be not emancipation, it would be difficult to say what is so, and when it can take effect. Then if she were emancipated after she came of age, it follows that the father, by the construction which has been put upon the statute of King *William*, gained a settlement by the subsequent hiring and service for a year in *T.*, as "an unmarried person, not "having any child." — GROSE J. The daughter lived apart from her father, after she was 21; not under his control, nor having any contemplation of it; nor receiving any assistance from him; she was therefore emancipated when her father was hired for a year, and served in *T.* — LE BLANC J. The question is, Whether any settlement gained by the father under these circumstances could be communicated to the daughter? for, if so, he could not gain a settlement by the hiring and service in *T.*; and that question depends upon this, Whether the daughter continued to be part of his family at the time. On the death of the father's wife, he broke up housekeeping, and the daughter was sent to her uncle, with whom she continued to live from that time; he supplying her with clothes and pocket-money: and there she still remained after she came of age. Under these circumstances, living away from her father before and after the age of 21, he having no house of his own, nor giving her any support, I think she ceased, after she came of age, to be part of her father's family, and, consequently, no future settlement gained by him could be communicated to her; and if so, he gained a settlement by the hiring and service in *T.* — BAYLEY J. To constitute emancipation, it is clearly not necessary for the child to have acquired a new settlement of his own: the case of *The King* v. *Roach* (*a*), is in point to that; where the daughter, being an adult, by leaving her father's house, and going out to service, was held to be emancipated. Now, where is the difference between going out from the father's house after 21 to seek a livelihood, and continuing out for the same purpose after that age, where the absence from the father is so long as it was here: the father too, during all that time, having no house of his own, and having indeed contracted a relation which precluded him from receiving his daughter at home. — Orders quashed.

(*a*) *Ante*, pl. 72.

A son apprenticed out by his father to a master, living under a certificate in another parish and not thereby acquiring any settle-

78. *Rex* v. *Hardwick*, *M. T.* 50 *G.* 3. 11 *East*, 578. — An appeal against an order of removal of *Joseph V.*, *Mary* his wife, and their children by name. And upon hearing of the appeal the Sessions confirmed the order, subject, &c. *John V.*, the father of the pauper *Joseph*, was a settled inhabitant of the parish of *Forncett St. Mary* in *Norwich*, and about forty years ago came to reside in the parish of *H.* in the same county, on a tenement at the rent of 5*l.* 10*s. per annum*. The pauper *Joseph V.*, who is now

years of age, was born in that parish, and when he 15 years old, and during his father's residence on the tenement at the above rent, he was bound apprentice to *S. W.* Besthorpe in *Norfolk*, cordwainer, by indenture for four years, which time he regularly served with his master, who resided in Besthorpe under a certificate from the parish of *Bunwell* in the same county. During the first years of the son's apprenticeship John *V.* the father purchased the tenement on which he resided at *H.* for 87*l.* Whilst the pauper was in the service of *W.* he was clothed by his father whom he occasionally visited on holydays, and at other times with his master's leave. At the expiration of the apprenticeship, the pauper being then 19 years of age, returned to his father's house in *H.*, where he stayed two days and received some new clothes. He then went back to his former master *W.*, with whom he made an engagement to work by the piece, and he continued working under such engagement in *Besthorpe* for a year and a quarter. The pauper afterwards worked by the piece with another cordwainer of the name of *Burn*; and with both *W.* and *Burn* he made his own agreements, but never let himself for a year to either of them or to any other person. — LORD ELLENBOROUGH C. J. The point made as to the emancipation of the son, who having gone from his father at the age of 15, and served as an apprentice under indentures for four years to a certificated master in another parish during the residence of his father in *H.*, and not having thereby acquired any settlement of his own, and having returned to his father again at the expiration of his apprenticeship, and requiring and receiving the further assistance of his father, must be considered as re-incorporated on his return into his father's family, and entitled to all the rights of one of its members; and, therefore, he followed the settlement which his father had in the mean time acquired in the parish of *H.* None of the cases of emancipation which have been decided on the ground of the children's marriage or obtaining a settlement of their own in another parish, or being under a different control incompatible with that of their parents till after the age of 21, apply to this case. The consequence is, that the order of the Sessions must be confirmed. — LE BLANC J. The facts of the case are shortly these: The father of the pauper being originally settled in another parish, about 41 years ago came to reside in *H.* upon a tenement under 10*l.* a year, which at first he rented, and during his residence there, and while his settlement continued in the parish to which he originally belonged, he put his son, then 15 years of age, out apprentice to a person residing in the parish of *Bunwell* under a certificate. About a year afterwards, while the son was residing with his master in *Bunwell*, the father acquired a settlement in *H.* by purchase for above 30*l.* of the tenement which he before rented, and then the first question is, Whether the settlement were communicable to the son? and that depends upon whether the son continued a part of his father's family, or, in the language of the books, were emancipated. Now during all the time that he lived with his master he was clothed by his father, whom he occasionally visited on holydays and at other times with his master's leave, and at the expiration of his apprenticeship he returned to his father's house in *H.*, and stayed there

ment of his own, but receiving clothes from his father, and visiting him from time to time, and returning home to him after the expiration of his apprenticeship before he was of age, though he went out to service again in two days, after receiving more clothes, is not emancipated from his father's family, and therefore follows a settlement gained by the father while he was so serving as an apprentice

two days, and received new clothes from his father. The question is, Whether, being then only 19 years of age, he continued under the control and as part of his father's family? When he left his master he went to his father's house as to his home, and his father supplied him with clothes, as he had done before; and none of the circumstances occur in this which in other cases have been held to constitute an emancipation. The father's settlement, therefore, was of course communicated to the pauper, his son. — BAYLEY J. I consider the pauper was not emancipated when the settlement was gained by his father in *H.* The pauper had not gained a settlement elsewhere, nor been married and become the head of another family, nor was he out of the control of his father at the time that the latter gained a settlement in *H.*: he therefore followed his father's settlement.

The pauper at the time of hiring himself had a daughter of the age of 18, who from the age of four had lived with her grandfather, and had been maintained by him till his death, and afterwards by her grandmother, which continued until she attained 21, the grandfather having by his will directed the grandmother to educate and maintain her out of a fund given to the grandmother for life, and after her decease to the daughter: Held that the daughter was not emancipated, and consequently pauper was not within stat. 3 & 4. *W.* & *M.*, a person *not having a child* at the time of the hiring.

79. *Rex* v. *Uckfield*, *T. T.* 56 *G.* 3. 5 *M.* & *S.* 214. — Upon appeal the Court of Quarter Sessions confirmed an order of two justices for the removal of *James Marshall* from *H.* to *U.*, subject to the opinion of this Court upon the following case: The pauper *James Marshall* being legally settled in the parish of *U.*, on the 10th of *April* 1802, hired himself for a year to one *Jeffery*, then residing in the parish of *Tonbridge*, in the county of *Kent*, and continued in the service of *Jeffery* in that parish for the whole year. *Marshall* was a widower at the time of his hiring himself to *Jeffery*, and had one daughter *Frances*, 18 years of age, who had been separated from him at the age of four years, and had lived with her grandfather until his death in 1801, during which time she was entirely supported by the grandfather, the pauper contributing nothing for her maintenance. The grandfather by his will devised the residue of his estate (which amounted to 1600*l.*) to his executors in trust, to place the same out upon security, and pay the interest to his wife for life for her own use, and he directed that his wife should during her life thereout educate and maintain *Elizabeth* and *Frances* the children of his late daughter *Elizabeth Marshall*, and after the decease of his wife he gave the said residue equally to be divided between the said *Elizabeth* and *Frances*; but in case his wife should die before they should attain 21, the interest to be applied to their maintenance and education during their minority; and upon their attaining 21 respectively, the principal to be paid to them accordingly; and if either of them should die under age, and without leaving issue, her share to go to the survivor; but if either should die under age, leaving issue, her share to be equally divided between such issue as they attained 21; the interest in the mean time to be applied towards their maintenance and education. After her grandfather's death *Frances* continued to live with her grandmother, and was entirely supported by her until she had attained 21, and was living with her at the time when the pauper hired himself to *Jeffery*, and never returned to her father. The question was, If the pauper gained a settlement in *Tonbridge* by this hiring and service? — LORD ELLENBOROUGH C. J. This is a perfectly new head of emancipation. The question is, If on account of a testamentary bounty left to this child by her relation, the child shall be deemed to be emancipated from all control of the father, and the father to be discharged from all claims of the child *for maintenance* if that should become necessary? If such a pro-

vision as this amounts to an emancipation the consequence will be, that the devolution of an estate to a child from the mother, for instance, would operate in the same way, and discharge the father from the duty of maintenance. This, then, is quite a new head of emancipation. The cases of emancipation put by Lord *Kenyon* in *Rex* v. *Witton cum Twambrookes* (*a*) are the child's attaining its full age, or being married or gaining a settlement for itself, or as in the case of the soldier, contracting a relation inconsistent with the idea of his being in a subordinate situation in his father's family. Not one of these is the case here; it is a case *sui generis*. If, therefore, it is to be considered as an emancipation, it must be on some reason or principle. Now the reason why it should be so considered is said to be this: that the provision made for the child secures to her an independence and maintenance, and to the parish a discharge from all probability of burthen on her account. The statute 3 *W. & M.* enacts, that if any unmarried person, not having child or children, *shall be* lawfully hired, &c. which has been construed to mean, that if he has no child that can be a burthen to the parish in consequence of his acquiring a settlement there, he shall be considered as not having a child within the meaning of the statute. But was that the case of this pauper when he hired himself? The property devised was merely in trust for the use and benefit of the grandmother, in the first instance, with a direction to her, certainly amounting in equity to an obligation to maintain the child, and after the grandmother's death to the child. But this trust might have failed, the trustees might have violated it, and not paid the interest to the grandmother, or she might have proved unfaithful to her trust, and refused or neglected to maintain the child; in which events, so long at least as they continued, the child must have resorted to her father for maintenance, who was not discharged by any emancipation of the child from the parental obligation of providing for her maintenance. It seems to me, therefore, under these circumstances, that the father was not in the situation of a person not having a child within the meaning of the statute, because he had a child who would have a right to share with him if he should be unable to provide one a maintenance from the parish where he should become settled, and who, consequently, might be a burthen to the parish. He was a person having a child who might, in the eventual failure of the funds bequeathed for her support, claim a provision from him, and he again might have claimed to have the control and custody of her at any time. The case has certainly been ingeniously argued; but I think it does not amount to an emancipation either to discharge the rights of the one or the duties of the other.—BAYLEY J. I am of the same opinion. The rule is, that the child's settlement shall shift with that of the father until the child is emancipated. This is a perfectly new case, and different from all the other cases of emancipation. A provision is made by the will of the grandfather for the maintenance and education of the child, who is living with her grandmother, apart from her father's family; and the question is, if such a provision can be said to deprive the parent of his rights over his child, to resume to himself the care and custody of her, or can relieve him from the duty of maintaining her. If this case amounts to an emancipation, would it not be the same under the like circumstances at whatever age the child might be? For the law makes no distinction in

(*a*) *Ante*, pl. 62.

respect of the different ages of infants under 21, at which time the parental authority ceases, and the father has no right to reclaim his child. Let us then put the case of an infant of very tender years, for whose maintenance the grandfather should make a provision by his will; could it be contended that such a provision would preclude the father from insisting upon having his child returned to him? I think that could hardly be contended. But to come nearer to the present case: suppose after the year's service of the father, the child then being of the age of 19, had returned to the roof of her father, the father having then acquired a new settlement by such service, can there be a doubt that the child would have taken that settlement? and yet if she was once emancipated she could not, because she would be emancipated for ever. If then she would have been entitled to the father's subsequent settlement, that shows that the separate provision made for her by her grandfather's will could not operate as an emancipation. I therefore think, that as she was not emancipated, but, notwithstanding the separate provision made for her, continued part of her father's family, and capable of deriving from her father any settlement which he might acquire, she was a child who might become chargeable to the parish in consequence of his acquiring a settlement. If so, it follows that the father was not in the situation of a person who is capable of acquiring a settlement by hiring and service; that is, a person not having a child within the meaning of the statute. — HOLROYD J. I concur in opinion with the rest of the Court. The maintenance provided for the child by the will was precarious, and the obligation of the father to maintain her still continued. The father's control over the child also continued: and therefore there is no ground upon the cases or upon principle to hold that the child was emancipated. I therefore think that the father was not in a situation to acquire a settlement by hiring and service. — Order confirmed.

Where a pauper was bound apprentice to a certificated man, and during his apprenticeship, he being of the age of eighteen, his father gained a new settlement, and the pauper did not return to his father's house till after he was twenty-one: Held, that he was not emancipated, and that his settlement followed the new settlement of his father.

80. *Rex* v. *Huggate*, *E. T.* 59 *G.* 3. 2 *B.* & *A.* 582. — Removal from *N.* to *H.* Order confirmed, subject, &c. — The pauper (his father being settled at *H.*), was bound apprentice till the period of his coming of age. The master, during the whole of the apprenticeship, resided at *Spaldington* under a certificate, at which place the apprentice served him until the expiration of the term. About the middle of the apprenticeship, the pauper's father took a farm of 80*l.* a year at *Storthwaite*, where he went to reside, and continued there during the remainder of his son's apprenticeship, and after it expired. He found the pauper with clothes, except shoes and aprons, during the apprenticeship. The pauper occasionally visited his father during that time; and on one occasion, when he was ill, went to reside with him there for a fortnight during his illness. At the time when the father went to reside at *Storthwaite* the pauper was between 18 and 19 years of age, and when the apprenticeship expired, he went home for one night, and a supper was provided by his father at *Storthwaithe* for him that night. The next day he went away, and went to work at various places for himself, but never gained any settlement by so doing. — BAYLEY J. It seems to me, that in this case, the pauper was not emancipated. He is bound apprentice to a certificated person, and consequently could not, by such service, gain any settlement. Unless he does so, his domicile

continues to be his father's house, and he is liable to be removed thither at any time. If, indeed, he had withdrawn himself from his father's family after 21, no doubt it would be an emancipation from that period. But a separation, whilst under 21, does not produce that effect, unless a subsequent settlement be gained. Here none was gained; and, therefore, his settlement shifted to *Storthwaite*, with that of his father. The order of Sessions is therefore wrong, and must be quashed. — HOLROYD J. In *Rex* v. *Witton cum Twambrookes* (a), Lord *Kenyon* enumerates the modes of emancipation; but this case does not fall within any one of them. — BEST J. concurred. — Order of Sessions quashed.

(a) *Ante*, pl. 69.

81. *Rex* v. *Bleasby*, *H. T.* 60 *G.* 3. and 1 *G* 4. 3 *B.* & *A.* 377 — *W. K.*, with his wife *C.* and four children, was removed from *B.* to *T.* by an order of two justices dated 19th *January* 1819. The *Sessions*, *on* appeal, discharged the order, subject, &c. — The pauper was born at *G.*, the place of his father's settlement, in *June* 1785; and at *Martinmas* 1798, being then 13 years of age, was hired and served for a year with *J. H.* of *G.* aforesaid, farmer. When the pauper was about 16 years of age, his father gained a settlement in *T.* by renting a tenement of the yearly value of 10*l.*, on which the father continued to reside during the remainder of the pauper's minority, and the pauper continued during such period (that is, from about two years after the expiration of his service in *G.*, until he was 21 years of age,) to reside in his father's house at *T.*, working during the time as a journeyman framework-knitter, and occasionally paying part of his earnings to his father, who was a labourer, as a compensation for his board. The Sessions being of opinion that the pauper had gained a settlement in his own right in *G.* by the hiring and service, and that the settlement gained about two years afterwards in *T.* by the pauper's father did not vary or affect the settlement of the pauper, discharged the order. — ABBOTT C. J. I am of opinion that, in this case, the order of Sessions should be confirmed. There are, undoubtedly, some consequences which will follow from this decision, which are to be regretted, but they are consequences arising from the system of the poor laws, over which the Court has no control. There is, however, another inconvenience, I mean the great frequency of legal controversies, which this Court can, in some degree, prevent, by not departing from the decisions of our predecessors who have left us, as it seems to me, an intelligible rule upon this subject. I take it to be settled law, that if a child acquire a settlement of his own, although he may afterwards, during his minority, return and live with his father's family, he does not follow the settlement of his father subsequently obtained. In this case the pauper did acquire a settlement by the hiring and service in *G.*; and after that time he derived his settlement no longer from his father, but from the contract of hiring. I cannot agree with what is stated in *Rex* v. *Keel* (b) on that subject; and, indeed, the point was no part of the decision of the Court in that case; for the question, both there and in *Rex* v. *Ingworth* (c), was, Whether a certificate was discharged by a hiring and service in the certyfying parish? and the Court held that it was not, on the ground, probably, that it was better to hold that no settlement *gained in the parish* granting the certi-

Where a pauper being settled by parentage in *A*, at the age of 13 years hired and served for a year in *A*, and afterwards, when he was 16 years old, returned to and lived with his father's family until he became of age: Held, that having acquired a settlement of his own in it, he did not follow the settlement of his father subsequently gained in another parish, whilst the pauper continued to reside with him.

(b) *Post*, pl. 755.

(c) *Ante*, pl. 78.

ficate, should affect the parish to whom it was granted, it not being a question into which the latter would be likely to enquire. Those cases are, however, very distinguishable from the present; I am, therefore, of opinion, that the order of Sessions ought to be confirmed. — BAYLEY J. I am of opinion, that the cases relating to certificated persons, ought to be wholly laid out of the question in the present case. It has long been considered as a point settled by *Rex* v. *Witton cum Twambrookes* that the settlement by parentage only continues so long as the child remains a member of the family, and that the settlement of a child who has acquired one of his own, does not shift with that of his father. Then the only question is, Whether this pauper has done any act to gain a settlement of his own in *G.*? It is said that he has not, because he had a settlement there before; but the words of the statute of the 3 *W. & M.* expressly provides that if an unmarried person shall so be hired and serve, he shall be judged and deemed to have a good settlement. It seems to me that the statute having expressly provided this, the pauper who was hired and served a year in *G.*, did gain a settlement there, and that the order of Sessions must, therefore, be confirmed. — HOLROYD J. I think that, in this case, the settlement of the son was not varied by the settlement of the father subsequently obtained. The cases which have been cited with respect to certificates, do not seem to me to be applicable to the present. I can see no reason why a party should not gain a new settlement in the parish in which he had one before, where originally he had it in another right, as derived from his father, and subsequently in his own right, under the contract of hiring and service. I therefore fully agree with the Court in thinking that this order ought to be confirmed. — Order confirmed.

A pauper, being eighteen years of age, and residing with his father, was drawn as a militia man, and served for five years as a ballotted man. During his service, he several times, when on furlough, and, finally, after his discharge from the militia, returned to his father's house: Held, that by his so remaining separated from his father's family after twenty-one, he was emancipated, although the original separation was not voluntary on *his part*.

82. *Rex* v. *Hardwick, M. T.* 2 *G.* 4. 5 *B.& A.* 176.—Two justices by their order removed *J. Hinton*, his wife and child, from the parish of *S. H.*, to the parish of *Hardwick*. The Sessions confirmed the order, subject to the opinion of this Court on the following case. The pauper was born in the parish of *H.* and resided there as a part of the family of his father, who was a settled inhabitant of that parish. In the year 1817, when the pauper was 18 years of age, he was drawn for the *Oxfordshire* militia, and served therein for five years as a ballotted man; the regiment during the whole of that period being embodied and in actual service. He joined the regiment in 1808, and in the year 1809, having obtained a furlough for three weeks, he returned to the house of his father, who was still residing at *H.*, and lived with him for about a fortnight. In the year 1811, the pauper obtained a second furlough for a fortnight, and went again to his father's, who had removed to, and was then residing in, the parish of *S. H.*, where he remained for about twelve days. The pauper was discharged from the militia in the year 1813, when he returned to his father in *S. H.*, who gave him lodgings in his house till his marriage. After the pauper's return from the militia, and before his marriage, his father gained a settlement in *S. H.* — ABBOTT C. J. The rule of law is, that every new settlement acquired by the parent is communicated to the children so long as they remain members of his family; and the question in this case is, whether at the time when the father gained his settlement in *S. H.*, this pauper remained a member of his family.

Now, during the minority of the child, he will remain almost under any circumstances unemancipated; but where the new settlement is acquired by the parent after the child has attained 21 it will not be communicated, unless, in fact the child continues part of the family. Where, therefore, at that, period he is absent, employed in gaining a livelihood for himself, or serving as in this case, in the militia, I think he no longer remains a member of the family. In the present case I think that the Sessions have come to a right conclusion, in deciding that the last legal settlement of the pauper was in *H.* — BAYLEY J. I am of the same opinion. If a child be separated from his father's family, and does not return till after 21, he ceases to be a member of that family, and, consequently, his settlement will not after 21 shift with that of his father. I think, therefore, that the Sessions are right, and that this case is hardly distinguishable from *Rex* v. *Walpole St. Peter's* (*a*). — HOLROYD J. I am of the same opinion. The distinction between a compulsory and a voluntary separation seems to be immaterial. The case must follow the same rule as *Rex* v. *Walpole St. Peter's*. — Order of Sessions confirmed.

(*a*) *Ante*, pl. 62.

83. *Rex* v. *Wilmington* (*b*), *H. T.* 2 & 3 *G.* 4. 5 *B.* & *A.* 525. — Two justices by their order removed *J. M.* his wife and family, from the parish of *C.* to *W.* The Sessions on appeal confirmed the order, subject, &c. The pauper, *J. M.* never did any act by which he acquired a settlement in his own right. In the year 1814, he was removed with his father, *T. M.* by an order of two justices, from the parish of *C.* to the parish of *W.*, as the place of settlement of the pauper's father, which order was appealed against, and upon the hearing of the appeal confirmed. The pauper, in the same year, returned with his father into the parish of *C.*, and was hired by the week to Sir *H. Crewe* in that parish, in whose service he continued as a weekly servant for nearly two years. Upon leaving the service of Sir *H. C.* he followed the occupation of mole-catching in the parish of *C.*, by which he obtained his own living. He never resided with his father's family, nor did his father exercise any control over him. In the latter end of the year 1815, when the pauper was about 17, his father left *C.*, and went to live first at *Poplar*, in a tenement at 4*s. per* week, where he continued about eight months, and in or about the month of *February* 1817, went to *Bow*, where he rented a house and orchard at 20*l. per annum*, and in which he still continues to reside. Whilst the pauper followed the business of mole-catching at *C.*, he used occasionally to visit his father both at *Poplar* and at *Bow*, and once slept at the father's house in *P.* but he did not receive any maintenance or assistance whatsoever from his father. After the father had occupied the house at *Bow* for rather more than a year, the pauper, who was then about 19 years of age, married his present wife. The question for the opinion of the Court was, whether the pauper before his marriage was emancipated by his earning his own livelihood, in the manner before mentioned, in the parish of *C.* — ABBOTT C. J. It is of importance to lay down a general rule for the guidance of magistrates on this subject of emancipation, and the best which I can suggest is this, that during the minority of a

During the minority of a child, there can be no emancipation unless he marries, and so becomes himself the head of a family, or contract some other relation, so as wholly and permanently to exclude the parental control. *Semble*, that the acquiring a settlement of his own does not properly constitute an emancipation.

(*b*) See *Rex v. Rotherfield Greys*, *post*, pl. 84.

was first argued in the last term, when the Court, after hearing the counsel in support of the orders, directed them to be quashed, being clearly of opinion that *R. S.*, the son of the certificated man, continued to reside with his mother in *S.* under the certificate granted to the father and his family, and therefore that the pauper could not gain a settlement by a hiring and service with *R. S.* But a doubt being afterwards suggested from the bar, whether some cases which had not been adverted to before might not vary the consideration of the question, the matter was directed to stand over for further argument. — LORD ELLENBOROUGH C. J. The opinion which I have formed does not appear to me to clash with the case of *Rex* v. *Heath*. There, there was every thing which could well be predicated of emancipation: the marriage of the son; his living in a separate house from his father, as the head of a distinct family; and being rated by the parish as such in his own name. Here there is nothing of the kind: while the father was living, the son resided under his roof; and after the father's death he continued to reside with his mother, who was the representative of the father, and equally protected by the certificate. This comes then directly within the principle of *Rex* v. *Hampton*; where it was holden, that an apprentice to the widow of a certificated man, could not gain a settlement in the certificated parish after the husband's death. If this question had come now to be decided for the first time, I should have been prepared to decide it on the plain words of the stat. of *Anne*, referring to the stat. 8 & 9 *W.* 3. *c.* 30. and 9 & 10 *W.* 3. *c.* 11., which have been broken in upon by many cases, laying down rules of construction much less plain than the words of the statute itself. The stat. 9 & 10 *W.* 3. *c.* 11. speaks of two methods only by which any person coming into a parish with a certificate shall by any act whatsoever be adjudged to have procured a legal settlement there: those are, by taking a tenement of the yearly value of 10*l.*, or by executing some annual office within the parish. Then the stat. 12 *Ann. st.* 1. *c.* 18. *s.* 2. enacts, that "if any person shall be an "apprentice bound by indenture, or be a hired servant to any "person who *came into* (which extends to such as came into the "parish with the person certificated) or *shall reside* in any parish "by means or licence of such certificate," (which includes such persons as come into the parish afterwards, and reside under the protection of the certificate) "and not having afterwards gained "a legal settlement there," (which was in allusion to the methods pointed out by the stat. 9 & 10 *W.* 3. *c.* 11.) "such apprentice or "servant shall not be adjudged thereby to have a settlement in "such place," &c. The object of the legislature by these acts certainly was to protect the certificated parish from sustaining any new burthen by persons gaining settlements there who were residing there upon the faith of these certificates, except by one or other of the methods pointed out. I am therefore decidedly against extending the construction of the statutes further than it has been carried. Now, who can be considered as a person residing by means or licence of a certificate, if the son of a certificated man, continuing to live with his father's widow in the certificated parish, is not such a person? If, as in the *Hampton* case, the widow of a certificated man were privileged to continue in the *parish under the* certificate after his death, as part of his family, so

must his son by the same rule, who continued part of the same family. There was no emancipation in this case to distinguish it from the other; but it comes expressly within the principle of the *Hampton* case; and, what is more material, it comes directly within the meaning of the statute of *Anne*.—GROSE J. A person is within the words of the statute of *Anne* who is serving another residing in any parish by means or licence of a certificate. Now here *R. S*, the son, either lived there as part of his father's or his mother's family during all the time: and it is not denied, that both the father in his life-time, and the mother after his death, were residing in *S.* under the certificate. There was no emancipation of the son, no taking of another house for himself, nor any thing of the sort which occurred in *Rex* v. *Heath*; and there is no pretence for saying, that his going out for a few weeks at harvest-time would operate as an emancipation. We ought to be careful not to create more doubts, by refining away the meaning of the statute and prior decisions upon the subject.—LAWRENCE J. declared himself of the same opinion.—LE BLANC J. We are now called upon to put a construction upon the statute 12 *Anne*; and as in the only case which turned on that branch of the statute, *Rex* v. *Hampton*, it was holden that the widow after the husband's death was still protected by the certificate as part of his family, and therefore that her apprentice serving her could not thereby gain a settlement in the certificated parish; so neither can the servant to the son continuing part of the same family gain a settlement there.—Both orders quashed.

A widower having a daughter, placed her at 11 years of age, with an uncle by whom she was wholly maintained after that time, and with whom she continued to reside after she came of age, doing service for him, but without any contract of hiring to give her a settlement of her own; the father having in the mean time gone out to service. Held, that on her coming of age she was emancipated, although her father conceived himself bound as such to receive and support her if she left her uncle's;

77. *Rex* v. *Cowhoneyborne*, *T. T.* 48 *G.* 3. 10 *East*, 88.—Removal from *T.* to *C.*, order confirmed, subject, &c. The pauper being legally settled in *C.*, sometime after the death of his wife, who died in childbed fifteen years ago last *Whitsuntide*, went to service, and hired himself to one *Clarke* of *C.*, who afterwards removed to *T.*, and the pauper left him at *Michaelmas* 1806, having served him the five preceding years under a hiring for a year in *T.* On the death of the pauper's wife, *W. N.*, who had married his sister, took to and maintained the infant, of which she had been delivered, out of kindness to the pauper; and the pauper's daughter, *Elizabeth*, then about eleven years of age, went, with the pauper's consent, to *N.*, for the purpose of nursing her infant sister. The infant died in about a year; and from that time to this she has continued to live in the house of *N.* as one of the family, but doing the work of a servant. *N.* who, previous to the pauper's daughter living with him, kept a servant, would have hired a servant if she had left him; but he never hired her, or paid her any wages, though he found her in board, clothes, and such pocket-money as he thought fit. The said *Elizabeth* will be 27 years of age in *June* 1808. During all the time she so lived with *N.*, she considered herself as liable to be sent away whenever he pleased; and he considered her as at liberty to quit him when she chose; and the pauper considered himself, as her father, bound to receive and support her if *N.* ceased so to do. But the pauper was not a hosuekeeper at any time after he went into *Clarke's* service. The pauper's daughter, *Elizabeth*, was never hired as a servant to *Nightingale*. The question intended for the opinion of the Court was, Whether the pauper's daughter *Elizabeth* were, under the *circumstances of the case, so* emancipated, as

and consequently the father was capable of gaining a settlement by hiring and service for a year, as "an unmarried man, *not having a child*" (i. e. not having a child who would follow his settlement) within the stat. 3 *W. & M.* c. 11. *s.* 7. —

to enable the pauper to gain a settlement by his service with *Clark* in *T.*, under such hiring as aforesaid. — LORD ELLENBOROUGH C. J. The daughter having been originally placed, when an infant, by her father in her uncle's family, continued to live with her uncle after she came of age as part of his family; receiving no assistance from her father, and being at liberty to depart from her uncle when she chose. She was of age, living apart from her father, having her support from sources independent of him, and was at liberty to quit her uncle when she pleased, as she herself considered. If this be not emancipation, it would be difficult to say what is so, and when it can take effect. Then if she were emancipated after she came of age, it follows that the father, by the construction which has been put upon the statute of King *William*, gained a settlement by the subsequent hiring and service for a year in *T.*, as "an unmarried person, not "having any child." — GROSE J. The daughter lived apart from her father, after she was 21; not under his control, nor having any contemplation of it; nor receiving any assistance from him; she was therefore emancipated when her father was hired for a year, and served in *T.* — LE BLANC J. The question is, Whether any settlement gained by the father under these circumstances could be communicated to the daughter? for, if so, he could not gain a settlement by the hiring and service in *T.*; and that question depends upon this, Whether the daughter continued to be part of his family at the time. On the death of the father's wife, he broke up housekeeping, and the daughter was sent to her uncle, with whom she continued to live from that time; he supplying her with clothes and pocket-money: and there she still remained after she came of age. Under these circumstances, living away from her father before and after the age of 21, he having no house of his own, nor giving her any support, I think she ceased, after she came of age, to be part of her father's family, and, consequently, no future settlement gained by him could be communicated to her; and if so, he gained a settlement by the hiring and service in *T.* — BAYLEY J. To constitute emancipation, it is clearly not necessary for the child to have acquired a new settlement of his own: the case of *The King* v. *Roach* (*a*), is in point to that; where the daughter, being an adult, by leaving her father's house, and going out to service, was held to be emancipated. Now, where is the difference between going out from the father's house after 21 to seek a livelihood, and continuing out for the same purpose after that age, where the absence from the father is so long as it was here: the father too, during all that time, having no house of his own, and having indeed contracted a relation which precluded him from receiving his daughter at home. — Orders quashed.

(*a*) *Ante*, pl. 72.

A son apprenticed out by his father to a master, living under a certificate in another parish and not thereby acquiring any settle-

78. *Rex* v. *Hardwick*, *M. T.* 50 *G.* 3. 11 *East*, 578. — An appeal against an order of removal of *Joseph V.*, *Mary* his wife, and their children by name. And upon hearing of the appeal the Sessions confirmed the order, subject, &c. *John V.*, the father of the pauper *Joseph*, was a settled inhabitant of the parish of *Forncett St. Mary* in *Norwich*, and about forty years ago came to reside in the parish of *H.* in the same county, on a tenement at the rent of 5*l.* 10*s. per annum*. The pauper *Joseph V.*, who is now

37 years of age, was born in that parish, and when he was 15 years old, and during his father's residence on the tenement at the above rent, he was bound apprentice to *S. W.* of *Besthorpe* in *Norfolk*, cordwainer, by indenture for four years, which time he regularly served with his master, who resided in *Besthorpe* under a certificate from the parish of *Bunwell* in the same county. During the first years of the son's apprenticeship *John V.* the father purchased the tenement on which he resided at *H.* for 87*l.* Whilst the pauper was in the service of *W.* he was clothed by his father whom he occasionally visited on holydays, and at other times with his master's leave. At the expiration of the apprenticeship, the pauper being then 19 years of age, returned to his father's house in *H.*, where he stayed two days and received some new clothes. He then went back to his former master *W.*, with whom he made an engagement to work by the piece, and he continued working under such engagement in *Besthorpe* for a year and a quarter. The pauper afterwards worked by the piece with another cordwainer of the name of *Burn*; and with both *W.* and *Burn* he made his own agreements, but never let himself for a year to either of them or to any other person. — LORD ELLENBOROUGH C. J. The point made as to the emancipation of the son, who having gone from his father at the age of 15, and served as an apprentice under indentures for four years to a certificated master in another parish during the residence of his father in *H.*, and not having thereby acquired any settlement of his own, and having returned to his father again at the expiration of his apprenticeship, and requiring and receiving the further assistance of his father, must be considered as re-incorporated on his return into his father's family, and entitled to all the rights of one of its members; and, therefore, he followed the settlement which his father had in the mean time acquired in the parish of *H.* None of the cases of emancipation which have been decided on the ground of the children's marriage or obtaining a settlement of their own in another parish, or being under a different control incompatible with that of their parents till after the age of 21, apply to this case. The consequence is, that the order of the Sessions must be confirmed. — LE BLANC J. The facts of the case are shortly these: The father of the pauper being originally settled in another parish, about 41 years ago came to reside in *H.* upon a tenement under 10*l.* a year, which at first he rented, and during his residence there, and while his settlement continued in the parish to which he originally belonged, he put his son, then 15 years of age, out apprentice to a person residing in the parish of *Bunwell* under a certificate. About a year afterwards, while the son was residing with his master in *Bunwell*, the father acquired a settlement in *H.* by purchase for above 30*l.* of the tenement which he before rented, and then the first question is, Whether the settlement were communicable to the son? and that depends upon whether the son continued a part of his father's family, or, in the language of the books, were emancipated. Now during all the time that he lived with his master he was clothed by his father, whom he occasionally visited on holydays and at other times with his master's leave, and at the expiration of his apprenticeship he returned to his father's house in *H.*, and stayed there

ment of his own, but receiving clothes from his father, and visiting him from time to time, and returning home to him after the expiration of his apprenticeship before he was of age, though he went out to service again in two days, after receiving more clothes, is not emancipated from his father's family, and therefore follows a settlement gained by the father while he was so serving as an apprentice

two days, and received new clothes from his father. The question is, Whether, being then only 19 years of age, he continued under the control and as part of his father's family? When he left his master he went to his father's house as to his home, and his father supplied him with clothes, as he had done before; and none of the circumstances occur in this which in other cases have been held to constitute an emancipation. The father's settlement, therefore, was of course communicated to the pauper, his son. — BAYLEY J. I consider the pauper was not emancipated when the settlement was gained by his father in *H.* The pauper had not gained a settlement elsewhere, nor been married and become the head of another family, nor was he out of the control of his father at the time that the latter gained a settlement in *H.*: he therefore followed his father's settlement.

The pauper at the time of hiring himself had a daughter of the age of 18, who from the age of four had lived with her grandfather, and had been maintained by him till his death, and afterwards by her grandmother, which continued until she attained 21, the grandfather having by his will directed the grandmother to educate and maintain her out of a fund given to the grandmother for life, and after her decease to the daughter: Held that the daughter was not emancipated, and consequently pauper was not within stat. 3 & 4. *W.* & *M.*, a person *not having a child* at the time of the hiring.

79. *Rex* v. *Uckfield*, *T. T.* 56 *G.* 3. 5 *M.* & *S.* 214. — Upon appeal the Court of Quarter Sessions confirmed an order of two justices for the removal of *James Marshall* from *H.* to *U.*, subject to the opinion of this Court upon the following case: The pauper *James Marshall* being legally settled in the parish of *U.*, on the 10th of *April* 1802, hired himself for a year to one *Jeffery*, then residing in the parish of *Tonbridge*, in the county of *Kent*, and continued in the service of *Jeffery* in that parish for the whole year. *Marshall* was a widower at the time of his hiring himself to *Jeffery*, and had one daughter *Frances*, 18 years of age, who had been separated from him at the age of four years, and had lived with her grandfather until his death in 1801, during which time she was entirely supported by the grandfather, the pauper contributing nothing for her maintenance. The grandfather by his will devised the residue of his estate (which amounted to 1600*l.*) to his executors in trust, to place the same out upon security, and pay the interest to his wife for life for her own use, and he directed that his wife should during her life thereout educate and maintain *Elizabeth* and *Frances* the children of his late daughter *Elizabeth Marshall*, and after the decease of his wife he gave the said residue equally to be divided between the said *Elizabeth* and *Frances;* but in case his wife should die before they should attain 21, the interest to be applied to their maintenance and education during their minority; and upon their attaining 21 respectively, the principal to be paid to them accordingly; and if either of them should die under age, and without leaving issue, her share to go to the survivor; but if either should die under age, leaving issue, her share to be equally divided between such issue as they attained 21; the interest in the mean time to be applied towards their maintenance and education. After her grandfather's death *Frances* continued to live with her grandmother, and was entirely supported by her until she had attained 21, and was living with her at the time when the pauper hired himself to *Jeffery*, and never returned to her father. The question was, If the pauper gained a settlement in *Tonbridge* by this hiring and service? — LORD ELLENBOROUGH C. J. This is a perfectly new head of emancipation. The question is, If on account of a testamentary bounty left to this child by her relation, the child shall be deemed to be emancipated from all control of the father, and the father to be discharged from all claims of the child *for maintenance* if that should become necessary? If such a pro-

vision as this amounts to an emancipation the consequence will be, that the devolution of an estate to a child from the mother, for instance, would operate in the same way, and discharge the father from the duty of maintenance. This, then, is quite a new head of emancipation. The cases of emancipation put by Lord *Kenyon* in *Rex* v. *Witton cum Twambrookes* (*a*) are the child's attaining its full age, or being married or gaining a settlement for itself, or as in the case of the soldier, contracting a relation inconsistent with the idea of his being in a subordinate situation in his father's family. Not one of these is the case here; it is a case *sui generis*. If, therefore, it is to be considered as an emancipation, it must be on some reason or principle. Now the reason why it should be so considered is said to be this: that the provision made for the child secures to her an independence and maintenance, and to the parish a discharge from all probability of burthen on her account. The statute 3 *W. & M.* enacts, that if any unmarried person, not having child or children, *shall be lawfully* hired, &c. which has been construed to mean, that if he has no child that can be a burthen to the parish in consequence of his acquiring a settlement there, he shall be considered as not having a child within the meaning of the statute. But was that the case of this pauper when he hired himself? The property devised was merely in trust for the use and benefit of the grandmother, in the first instance, with a direction to her, certainly amounting in equity to an obligation to maintain the child, and after the grandmother's death to the child. But this trust might have failed, the trustees might have violated it, and not paid the interest to the grandmother, or she might have proved unfaithful to her trust, and refused or neglected to maintain the child; in which events, so long at least as they continued, the child must have resorted to her father for maintenance, who was not discharged by any emancipation of the child from the parental obligation of providing for her maintenance. It seems to me, therefore, under these circumstances, that the father was not in the situation of a person not having a child within the meaning of the statute, because he had a child who would have a right to share with him if he should be unable to provide one a maintenance from the parish where he should become settled, and who, consequently, might be a burthen to the parish. He was a person having a child who might, in the eventual failure of the funds bequeathed for her support, claim a provision from him, and he again might have claimed to have the control and custody of her at any time. The case has certainly been ingeniously argued; but I think it does not amount to an emancipation either to discharge the rights of the one or the duties of the other.—BAYLEY J. I am of the same opinion. The rule is, that the child's settlement shall shift with that of the father until the child is emancipated. This is a perfectly new case, and different from all the other cases of emancipation. A provision is made by the will of the grandfather for the maintenance and education of the child, who is living with her grandmother, apart from her father's family; and the question is, if such a provision can be said to deprive the parent of his rights over his child, to resume to himself the care and custody of her, or can relieve him from the duty of maintaining her. If this case amounts to an emancipation, would it not be the same under the like circumstances at whatever age the child might be? For the law makes no distinction in

(*a*) *Ante*, pl. 69.

respect of the different ages of infants under 21, at which time the parental authority ceases, and the father has no right to reclaim his child. Let us then put the case of an infant of very tender years, for whose maintenance the grandfather should make a provision by his will; could it be contended that such a provision would preclude the father from insisting upon having his child returned to him? I think that could hardly be contended. But to come nearer to the present case: suppose after the year's service of the father, the child then being of the age of 19, had returned to the roof of her father, the father having then acquired a new settlement by such service, can there be a doubt that the child would have taken that settlement? and yet if she was once emancipated she could not, because she would be emancipated for ever. If then she would have been entitled to the father's subsequent settlement, that shows that the separate provision made for her by her grandfather's will could not operate as an emancipation. I therefore think, that as she was not emancipated, but, notwithstanding the separate provision made for her, continued part of her father's family, and capable of deriving from her father any settlement which he might acquire, she was a child who might become chargeable to the parish in consequence of his acquiring a settlement. If so, it follows that the father was not in the situation of a person who is capable of acquiring a settlement by hiring and service; that is, a person not having a child within the meaning of the statute. — HOLROYD J. I concur in opinion with the rest of the Court. The maintenance provided for the child by the will was precarious, and the obligation of the father to maintain her still continued. The father's control over the child also continued: and therefore there is no ground upon the cases or upon principle to hold that the child was emancipated. I therefore think that the father was not in a situation to acquire a settlement by hiring and service. — Order confirmed.

Where a pauper was bound apprentice to a certificated man, and during his apprenticeship, he being of the age of eighteen, his father gained a new settlement, and the pauper did not return to his father's house till after he was twenty-one: Held, that he was not emancipated, and that his settlement followed the new settlement of his father.

80. *Rex* v. *Huggate*, *E. T.* 59 *G.* 3. 2 *B.* & *A.* 582. — Removal from *N.* to *H.* Order confirmed, subject, &c. — The pauper (his father being settled at *H.*), was bound apprentice till the period of his coming of age. The master, during the whole of the apprenticeship, resided at *Spaldington* under a certificate, at which place the apprentice served him until the expiration of the term. About the middle of the apprenticeship, the pauper's father took a farm of 80*l.* a year at *Storthwaite*, where he went to reside, and continued there during the remainder of his son's apprenticeship, and after it expired. He found the pauper with clothes, except shoes and aprons, during the apprenticeship. The pauper occasionally visited his father during that time; and on one occasion, when he was ill, went to reside with him there for a fortnight during his illness. At the time when the father went to reside at *Storthwaite* the pauper was between 18 and 19 years of age, and when the apprenticeship expired, he went home for one night, and a supper was provided by his father at *Storthwaithe* for him that night. The next day he went away, and went to work at various places for himself, but never gained any settlement by so doing. — BAYLEY J. It seems to me, that in this case, the pauper was not emancipated. He is bound apprentice to a certificated person, and consequently could not, by such service, gain any settlement. Unless he does so, his domicile

continues to be his father's house, and he is liable to be removed thither at any time. If, indeed, he had withdrawn himself from his father's family after 21, no doubt it would be an emancipation from that period. But a separation, whilst under 21, does not produce that effect, unless a subsequent settlement be gained. Here none was gained; and, therefore, his settlement shifted to *Storthwaite*, with that of his father. The order of Sessions is therefore wrong, and must be quashed. — HOLROYD J. In *Rex* v. *Witton cum Twambrookes* (a), Lord *Kenyon* enumerates the modes of emancipation; but this case does not fall within any one of them. — BEST J. concurred. — Order of Sessions quashed.

(a) *Ante*, pl. 69.

81. *Rex* v. *Bleasby*, *H. T.* 60 *G.* 3. and 1 *G.* 4. 3 *B. & A.* 377 — *W. K.*, with his wife *C.* and four children, was removed from *B.* to *T.* by an order of two justices dated 19th *January* 1819. The Sessions, on appeal, discharged the order, subject, &c. — The pauper was born at *G.*, the place of his father's settlement, in *June* 1785; and at *Martinmas* 1798, being then 13 years of age, was hired and served for a year with *J. H.* of *G.* aforesaid, farmer. When the pauper was about 16 years of age, his father gained a settlement in *T.* by renting a tenement of the yearly value of 10*l.*, on which the father continued to reside during the remainder of the pauper's minority, and the pauper continued during such period (that is, from about two years after the expiration of his service in *G.*, until he was 21 years of age,) to reside in his father's house at *T.*, working during the time as a journeyman framework-knitter, and occasionally paying part of his earnings to his father, who was a labourer, as a compensation for his board. The Sessions being of opinion that the pauper had gained a settlement in his own right in *G.* by the hiring and service, and that the settlement gained about two years afterwards in *T.* by the pauper's father did not vary or affect the settlement of the pauper, discharged the order. — ABBOTT C. J. I am of opinion that, in this case, the order of Sessions should be confirmed. There are, undoubtedly, some consequences which will follow from this decision, which are to be regretted, but they are consequences arising from the system of the poor laws, over which the Court has no control. There is, however, another inconvenience, I mean the great frequency of legal controversies, which this Court can, in some degree, prevent, by not departing from the decisions of our predecessors who have left us, as it seems to me, an intelligible rule upon this subject. I take it to be settled law, that if a child acquire a settlement of his own, although he may afterwards, during his minority, return and live with his father's family, he does not follow the settlement of his father subsequently obtained. In this case the pauper did acquire a settlement by the hiring and service in *G.*; and after that time he derived his settlement no longer from his father, but from the contract of hiring. I cannot agree with what is stated in *Rex* v. *Keel* (b) on that subject; and, indeed, the point was no part of the decision of the Court in that case; for the question, both there and in *Rex* v. *Ingworth* (c), was, Whether a certificate was discharged by a hiring and service in the certyfying parish? and the Court held that it was not, on the ground, probably, that it was better to hold that no settlement gained in the parish granting the certi-

Where a pauper being settled by parentage in *A*, at the age of 13 years hired and served for a year in *A*, and afterwards, when he was 16 years old, returned to and lived with his father's family until he became of age: Held, that having acquired a settlement of his own in it, he did not follow the settlement of his father subsequently gained in another parish, whilst the pauper continued to reside with him.

(b) *Post*, pl. 755.

(c) *Ante*, pl. 78.

ficate, should affect the parish to whom it was granted, it not being a question into which the latter would be likely to enquire. Those cases are, however, very distinguishable from the present; I am, therefore, of opinion, that the order of Sessions ought to be confirmed. — BAYLEY J. I am of opinion, that the cases relating to certificated persons, ought to be wholly laid out of the question in the present case. It has long been considered as a point settled by *Rex* v. *Witton cum Twambrookes* that the settlement by parentage only continues so long as the child remains a member of the family, and that the settlement of a child who has acquired one of his own, does not shift with that of his father. Then the only question is, Whether this pauper has done any act to gain a settlement of his own in *G.*? It is said that he has not, because he had a settlement there before; but the words of the statute of the 3 *W. & M.* expressly provides that if an unmarried person shall so be hired and serve, he shall be judged and deemed to have a good settlement. It seems to me that the statute having expressly provided this, the pauper who was hired and served a year in *G.*, did gain a settlement there, and that the order of Sessions must, therefore, be confirmed. — HOLROYD J. I think that, in this case, the settlement of the son was not varied by the settlement of the father subsequently obtained. The cases which have been cited with respect to certificates, do not seem to me to be applicable to the present. I can see no reason why a party should not gain a new settlement in the parish in which he had one before, where originally he had it in another right, as derived from his father, and subsequently in his own right, under the contract of hiring and service. I therefore fully agree with the Court in thinking that this order ought to be confirmed. — Order confirmed.

A pauper, being eighteen years of age, and residing with his father, was drawn as a militia man, and served for five years as a ballotted man. During his service, he several times, when on furlough, and, finally, after his discharge from the militia, returned to his father's house: Held, that by his so remaining separated from his father's family after twenty-one, he was emancipated, although the original separation was not voluntary on his part.

82. *Rex* v. *Hardwick, M. T.* 2 *G.* 4. 5 *B.& A.* 176.—Two justices by their order removed *J. Hinton*, his wife and child, from the parish of *S. H.*, to the parish of *Hardwick*. The Sessions confirmed the order, subject to the opinion of this Court on the following case. The pauper was born in the parish of *H.* and resided there as a part of the family of his father, who was a settled inhabitant of that parish. In the year 1817, when the pauper was 18 years of age, he was drawn for the *Oxfordshire* militia, and served therein for five years as a ballotted man; the regiment during the whole of that period being embodied and in, actual service. He joined the regiment in 1808, and in the year 1809, having obtained a furlough for three weeks, he returned to the house of his father, who was still residing at *H.*, and lived with him for about a fortnight. In the year 1811, the pauper obtained a second furlough for a fortnight, and went again to his father's, who had removed to, and was then residing in, the parish of *S. H.*, where he remained for about twelve days. The pauper was discharged from the militia in the year 1813, when he returned to his father in *S. H.*, who gave him lodgings in his house till his marriage. After the pauper's return from the militia, and before his marriage, his father gained a settlement in *S. H.* — ABBOTT C. J. The rule of law is, that every new settlement acquired by the parent is communicated to the children so long as they remain members of his family; and the question in this case is, whether at the time when the father gained his settlement ni *S. H.*, this pauper remained a member of his family.

Now, during the minority of the child, he will remain almost under any circumstances unemancipated; but where the new settlement is acquired by the parent after the child has attained 21 it will not be communicated, unless, in fact the child continues part of the family. Where, therefore, at that, period he is absent, employed in gaining a livelihood for himself, or serving as in this case, in the militia, I think he no longer remains a member of the family. In the present case I think that the Sessions have come to a right conclusion, in deciding that the last legal settlement of the pauper was in *H.* — BAYLEY J. I am of the same opinion. If a child be separated from his father's family, and does not return till after 21, he ceases to be a member of that family, and, consequently, his settlement will not after 21 shift with that of his father. I think, therefore, that the Sessions are right, and that this case is hardly distinguishable from *Rex* v. *Walpole St. Peter's* (*a*). — HOLROYD J. I am of the same opinion. The distinction between a compulsory and a voluntary separation seems to be immaterial. The case must follow the same rule as *Rex* v. *Walpole St. Peter's*. — Order of Sessions confirmed.

(*a*) *Ante*, pl. 62.

During the minority of a child, there can be no emancipation unless he marries, and so becomes himself the head of a family, or contract some other relation, so as wholly and permanently to exclude the parental control. *Semble*, that the acquiring a settlement of his own does not properly constitute an emancipation.

83. *Rex* v. *Wilmington* (*b*), *H. T.* 2 & 3 *G.* 4. 5 *B.* & *A.* 525. — Two justices by their order removed *J. M.* his wife and family, from the parish of *C.* to *W.* The Sessions on appeal confirmed the order, subject, &c. The pauper, *J. M.* never did any act by which he acquired a settlement in his own right. In the year 1814, he was removed with his father, *T. M.* by an order of two justices, from the parish of *C.* to the parish of *W.*, as the place of settlement of the pauper's father, which order was appealed against, and upon the hearing of the appeal confirmed. The pauper, in the same year, returned with his father into the parish of *C.*, and was hired by the week to Sir *H. Crewe* in that parish, in whose service he continued as a weekly servant for nearly two years. Upon leaving the service of Sir *H. C.* he followed the occupation of mole-catching in the parish of *C.*, by which he obtained his own living. He never resided with his father's family, nor did his father exercise any control over him. In the latter end of the year 1815, when the pauper was about 17, his father left *C.*, and went to live first at *Poplar*, in a tenement at 4*s. per* week, where he continued about eight months, and in or about the month of *February* 1817, went to *Bow*, where he rented a house and orchard at 20*l. per annum*, and in which he still continues to reside. Whilst the pauper followed the business of mole-catching at *C.*, he used occasionally to visit his father both at *Poplar* and at *Bow*, and once slept at the father's house in *P.* but he did not receive any maintenance or assistance whatsoever from his father. After the father had occupied the house at *Bow* for rather more than a year, the pauper, who was then about 19 years of age, married his present wife. The question for the opinion of the Court was, whether the pauper before his marriage was emancipated by his earning his own livelihood, in the manner before mentioned, in the parish of *C.* — ABBOTT C. J. It is of importance to lay down a general rule for the guidance of magistrates on this subject of emancipation, and the best which I can suggest is this, that during the minority of a

(*b*) See *Rex v. Rotherfield Greys*, *post*, pl. 84.

child there can be no emancipation, unless he marries, and so becomes himself the head of a family, or contracts some other relation, so as wholly and permanently to exclude the parental control. I say nothing about his acquiring a settlement of his own, because that does not, as it seems to me, properly fall under this head. There can be, however, no question, that in that case he is only removable to his own acquired settlement. Here, the pauper was under 21, and had neither married nor contracted any such relation as I have described, at the time when his father acquired the settlement at *Bow*. He was, therefore, not emancipated, and the order of Sessions is wrong.—Order of Sessions quashed. (*a*)

A minor, having enlisted into the marines, was discharged from that service, and returned to his father's family before he attained the age of twenty-one years: Held, that he was not emancipated.

84. *Rex* v. *Rotherfield Greys, Oxon H. T.* 3 & 4 *G.* 4. 1 *B. & C.* 345. — Two justices, by their order, removed *T. Binfield* from the parish of *T.* to *R.* Upon an appeal, the Sessions confirmed the order, subject, &c. The pauper was born on the 22d of *November* 1794, in the appellant parish, where his father was settled. In 1807 the pauper's father removed with his wife and family, including the pauper, to the parish of *T.*, and took a cottage there, which he has held ever since, at 3*s. per* week. The pauper resided at *T.* with his parents till 1813, when he enlisted in the marines, and went abroad in that service. He remained in the marines till the 8th *September* 1815, when, in consequence of the reduction of that corps, after the peace, he received his discharge, and returned the same day to his parents at *T.*, being then under the age of 21 years, and resided with them from that time until some time after his father hired a stable in *Streatham*. About a year after the pauper's return home, the pauper being then more than 21 years of age, his father hired a stable in the adjoining parish of *Streatham*, at 4*s.* a week, which he held for about nine months, still continuing to reside at the cottage at *T.* The cottage and the stable together were above the annual value of 10*l.* The pauper had never done any act to acquire a settlement for himself.— BAYLEY J. I am of opinion that the pauper was not emancipated. In order to constitute emancipation, the party ought to be wholly and permanently free from the parental control. In this case, the pauper, by enlisting into the marines, became subject to the control of the crown, and continued subject to that control, as long as the period of his service continued; and if he had remained in the army till the age of 21 years, his emancipation would undoubtedly relate back to the time of his enlistment; but before he attained the age of 21 years, the relation between him and the crown ceased, and he returned to and constituted part of his father's family, and of course again became subject to the parental coutrol. He, therefore, was not emancipated. This is consistent with the opinion of Lord *Kenyon* C. J. and *Lawrence* J., in *Rex* v. *Roach* (*a*), and is consistent with the general rule laid down by the present Lord Chief Justice in the late case of *Rex* v. *The Inhabitants of Wilmington* (*b*), "That during "the minority of a child, there can be no emancipation, unless he "marries, and so becomes himself the head of a family, or con- "tracts some other relation, so as wholly and permanently to ex- "clude the parental control." Now the pauper, in this case, by entering into the marines, did not, in the event that has happened, contract a relation, so as wholly and *permanently* to exclude the

(*a*) *Ante*, pl. 72.
(*b*) *Ante*, pl. 83.

(*a*) See Rex *v.* Witton cum Twambrookes, *ante*, pl. 69.

parental control, for he returned to his father's family before he became of age, and again subjected himself to the parental control. In the late case of *Rex* v. *The Inhabitants of Hardwick* (*a*), the Lord C. J. says, "That during the minority of a child, he will remain, almost under any circumstances, unemancipated; but "where the new settlement is acquired by the parent, after the "child has attained 21 years of age, it will not be communicated, "unless, in fact, the child continues part of the family. When, "therefore, at that period, he is absent, employed in getting a "living for himself, or serving in the militia, he no longer remains a member of the family." In this case, the pauper was, at the period when he attained to the age of 21 years, living with his father, and constituting a part of his family. He was, therefore, not emancipated, and he acquires his father's settlement in *T*., and the order of Sessions must be quashed. — HOLROYD J. I am of opinion that the son was not emancipated so as to deprive him of the settlement gained by the father in the parish of *T*. By the common law, the father is entitled to the control of his child, unless some other circumstances occur to deprive him of his control. By entering into the marines, the pauper ceased to be under the control of his father, and became subject to the control of the crown, as long as that state of circumstances continued. But before he attained the age of 21, he ceased also to be under the control of the crown, returned to his father's family, and again became subject to his control, and, consequently, was not emancipated. It has been said, that this being an engagement for life, constitutes in itself a complete and perfect emancipation. It was an engagement for life, so as to bind the pauper to serve for life, if required; but the duration of the service depends on the discretion of the crown. It may or may not last for life; and in this case it was terminated before the pauper attained the age of 21 years; so that the parental authority was not wholly and permanently excluded. — BEST J. By the general policy of the law of *England*, the parental authority continues until the child attains the age of 21 years; but the same policy also requires, that a minor shall be at liberty to contract an engagement to serve the state. When such an engagement is contracted, it becomes inconsistent with the duty which he owes to the public, and the parental authority should continue. The parental authority, however, is suspended but not destroyed. When the reason for its suspension ceases, the parental authority returns. This is perfectly consistent with the opinions of Lord *Kenyon* C. J. and *Lawrence* J., in *Rex* v. *Roach*, and with the general rule laid down by the present Lord C. J., in *Rex* v. *The Inhabitants of Wilmington*. In this case, the pauper, before he attained the age of 21 years, returned to his father's family, and again became subject to the control of his father. He was not, therefore, emancipated at the time when the father acquired his settlement in the parish of *T*., and, therefore, the order of Sessions must be quashed. —Order of Sessions quashed.

Ante, pl. 82.

CHAPTER III.

SETTLEMENT BY MARRIAGE.

I. *The Marriage Acts.*
II. *Of the Marriage; and the Evidence to prove it.*
III. *Of the Wife's Settlement in Right of the Husband.*
IV. *Of the Wife's Settlement in her own Right.*
V. *Of the Removal of the Wife.*

I. *The Marriage Acts.*

26 G. 2. c. 33. 21 G. 3. c. 53. 3 G. 4. c. 75. 4 G. 4. c. 76. 5 G. 4. c. 32.

II. *Of the Marriage; and the Evidence to prove it.*

The fact of marriage cannot be inquired into after an order of removal stating the parties to be *husband and wife*, if such order be not appealed against at the next Sessions.

S. C. Burr. Sett. Cas. 168.

85. REX v. *Berkeswell*, *M. T.* 15 *G.* 2. EDITOR's *MSS.*—Two justices removed *T. P.* and *M.* his *wife* from the parish of *Berkeswell* to the parish of *Bollsall*, as to the place of *T. P.*'s settlement. This order the parish of *Bollsall* neglected to appeal against at the next Quarter Sessions. Afterwards the overseers of *Bollsall*, finding out that the pauper *M.* was not the wife of *T. P.* applied to two justices, who made an order to remove her as *a single woman* from *Bollsall* to *Berkeswell*, where she had acquired a settlement by hiring and service; and the Sessions on appeal entered into the question of the marriage, and confirmed the order. These orders being removed into the King's Bench, LUDFORD contended, that as this woman had been removed from *Berkeswell* to *Bollsall* as *the wife* of *P.*, the order, not having been appealed against, was conclusive, and precluded any subsequent examination into the fact of the marriage.—And THE COURT were unanimously of opinion that these two last orders were bad. A rule, however, was granted to show cause why these orders should not be quashed; and it was afterwards made absolute, no cause being shown.

A marriage contracted previous to the marriage act, if the ceremony was not performed by a priest in holy orders, and in *facie ecclesiæ*, was null and void; and no settlement can be gained by the woman under it.

S. C. 1 Wils. 74. See the case *of* Rex *v.* Hodnett, *post*, *pl. 98.*

86. *Rex* v. *Luffington*, *E. T.* 17 *G.* 2. *Burr. S. C.* 232.—About eighteen years since one *W. H.* was married to *M. H.* spinster, at the city of *B.* by a person in a black coat and a band, whom the said *M. H.* apprehended to be *a clergyman*, but she was afterwards informed that he was a *layman*: the matrimonial ceremony of the church of *England* was duly read over, and a ring was properly made use of; and the same was performed in a private room in a dwelling-house, and not in a church or chapel: in pursuance of such marriage, the said *W. H.* and *M.* cohabited as man and wife for the space of nine or ten years, but did not live together afterwards: on or about the 10th of *June* 1742, *W. H.* was, during the life-time of the said *M.* regularly married to the pauper *E.* in the parish-church of *S.* by a clergyman in holy orders, according to the form of the church of *England*, by virtue of a *licence* obtained by *H.* for that purpose.—LEE C. J. said, that as to the person in the black coat and band, &c. it was only *evidence* of the circumstances of the first marriage, whereas the Sessions should have

found *the fact*, whether the marriage was by a clergyman in holy orders or not; but this they have not done. — THE COURT therefore held the state of the case to be *imperfect:* and for this cause both the orders, removing *E.* the wife of *W. H.* from *S.* to *L.* were quashed. (*a*)

87. *Rex* v. *Watson and Perrot, M. T.* 17 *G.* 2. 1 *Wils.* 41. — The Court granted an information against the defendants, who were overseers of the poor of the parish of *Dorton* in the county of *Bucks*, for procuring one *Vine*, a soldier, who had a settlement in the parish of *Brill*, to marry a poor woman, who was an idiot, and chargeable to the parish of *Dorton*, by giving *Vine* ten pounds and a fat hog for marrying her, whereby she and her child became chargeable to the parish of *Brill;* and it was said that an information had been granted in a like case in *Hillary Term* in 1735.

A marriage though procured by bribery will gain a settlement.

88. *Rex* v. *Headcorn, T. T.* 19 *G.* 2. EDITOR'*s MSS.* — The parish of *M.* had certificated *R. B.* and *M.* his wife to the parish of *H.;* but it appeared that *R.*, previous to his marriage with this woman, whose maiden name was *M. B.*, was lawfully married to one *M. L.*, who was still living. The overseers of *M.*, at the time of granting the certificate, believed the said *M. B.* to be his lawful wife, not knowing nor having ever heard that he had any other wife. After the certificate was given, the lawful wife, *M. L.*, was removed with her three children to *M.*, as to the place of her husband's settlement. After this, *R.* and *M. B.*, as his wife, with their four children, were removed from *H.* to *M.*—The WHOLE COURT were of opinion in this case, that the parish of *M.*, having certificated *M. B.* as the lawful wife of *R. B.*, could not now controvert the legality of their marriage, for that the certificate is a sort of an adjudication that they are man and wife.

If a *man* and *woman* be certificated as *husband* and *wife*, the legality of their marriage cannot be controverted by the certifying parish.
S. C. Burr. Sett. Cases, 253. Str. 1233 2 Sess. Cas 391. Rex v. Ullerthorpe, 8 T. R. 465.

89. *Rex* v. *Preston, M. T.* 33 *G.* 2. *Burr. S. C.* 486. — Two justices removed *E. Y.* and *R.* his wife, and *M.* their child, from *C.* to *P.;* and the Sessions on appeal confirmed the order in all its points, and stated the following case: — *E. Y.* being legally settled at *P.*, and not being then a widower, was, on the 25th of *January* 1758, without the consent of his father, who was then living, married by licence in the parish-church of *T.* to *R. D.* (who was settled in the said parish of *T.*, and who was removed to *P.* by the said order as the wife of the said *E. Y.*), the said *E. Y.* being then an infant of 20 years of age; and after the marriage, the said *R.* was brought to bed in the parish of *C.* of the said *M.*, removed by the said order. — LORD MANSFIELD took the distinction between acts of parliament made against one party and for the benefit of another who has an election either to take the benefit of it or not, and acts of parliament made against both parties. The marriage act, *he* said, was a statute made against both, and the marriage is thereby expressly declared absolutely null and void to all intents and purposes whatsoever; so that it is not like the cases cited, nor like the cases on the statute of bigamy (*b*), which was made against only one of the parties. The other Judges concurred with his Lordship; and FOSTER J. added, that the act was made against the innocent children of both the parties, and that it would be

The marriage of *an infant* without the consent of parents, is void by the marriage act; and therefore a woman and her children cannot gain the settlement of the man with whom she is *so connected.*
S. C. 1 Bl. Rep. 192.

(*b*) 1 Jac. 1. c. 11.

(*a*) But *Lee*, C. J. thought the point to be of great importance, and to require great consideration. *And* see 2 Salk. 432. 2 Str. 937. Swinb. 74. 2 Salk. 438. 6 Mod. 155. Peake's *Cases, 232.*

against the spirit of the act to understand it otherwise than that the marriage shall be absolutely void. The orders were therefore quashed as to *R.* and *M.* and confirmed as to *E. Y.*

The validity of a marriage by banns is not affected, as to the purposes of settlement, by the entry in the parish-register not being signed by the minister or some other person in his presence, as directed by 26 G. 2. c. 33. § 14.

S. C. Bl. Rep. 367.

90. *Rex* v. *Devereaux, E. T.* 2 *G.* 3. *Burr. S. C.* 506. — Two justices removed *S. M.* from *D.* to *St. D.*, and the Sessions confirmed the order on the following case: The pauper was, before her supposed marriage with *J. M.*, legally settled in *St. D.*; and *J. M.* was and now is legally settled in *L.*, but was not in the parish of *St. D.* at the time the order of removal was made. It was proved, that the marriage between the said *S.* and *J.* was solemnized on the 7th of *February* 1758, in the parish church of *St. D.*, by the minister of the said parish, by *banns*; and the entry of the said marriage in the register-book of the said parish was made in the following manner: "1758, *John Meredith* and *Su-*" *sannah Jenkins* were married by banns:" but neither the minister, the parties, nor the witnesses signed the entry, and no other entry of the said marriage was ever made. — PRICE, in support of the order, insisted, that this was a void marriage; for although the omission of *banns* was originally only an offence against ecclesiastical law, and that even by the statute 7 & 8 *Will.* 3. *c.* 35. *s.* 2. the *parson* and *clerk* and *man married* without licence or banns were only liable to a penalty, yet since the marriage act 26 *G.* 2. *c.* 33. *s.* 14., an entry of this, properly signed, is become so essential a circumstance, that without it the marriage itself is null and void. — LORD MANSFIELD. It is not incumbent on the persons married to prove that the banns were published, nor does *the entry* directed to be made affect the validity of the marriage. In a suit of jactitation of marriage in the spiritual court, whilst the parties are alive, they are put to prove all ceremonies: but in all other cases, proof by witnesses who saw the marriage is *primâ facie* sufficient; and whoever would impeach it, must show wherein it is irregular. In the present case, the marriage appears by the witnesses and the register to have been by banns, and therefore there is no colour for any objection; for the entry of the register is not of the essence of the marriage.

Bull. Nisi Prius, 114. See the Duchess of Kingston's case, State Trials, vol. xi. 198. to 260. Mr. Hargrave's edition, and Peakes, N. P. 232.

Cohabitation as man and wife for *thirty years*, is such a presumptive proof of *marriage* as will entitle the children of the parties to the settlement of their parents under it.

91. *Rex* v. *Stockland, T. T.* 2 *G* 3. *Burr. S. C.* 508. — Two justices made an order for the removal of *J. M.* and *M.* his wife and their six children from *S.* to *C.* The Sessions quashed the order, and stated the following case: — *J. M.* and *E. M.* the father and mother of the first-named pauper, being both resident in *C.*, went from thence together about the year 1723, declaring that they were going to be married, and soon returned, declaring that they had been married. From that time they cohabited as man and wife for the space of about thirty years, and until the death of the said *E.* The first-named pauper was born in the parish of *C.* in the year 1725, and was there baptized, and his baptism registered as the son of *J.* and *E. M.* The said *J.* and *E.* for some years before the death of the said *E.* removed from *C.* to *S.*, and there acquired a settlement by renting a farm of 50*l.* a year; and which farm the said *J.* continued to rent and occupy. The first named pauper, their son, went with them from *C.* to *S.*, where he married *M.*, the second pauper, and had issue the other pauper before mentioned; and neither of them appear to have done any act to gain a settlement: the question being, under *these circumstances*, Whether the said *J.* and *E.*, the father and

mother of the first named pauper, were to be considered as husband and wife at the time of his birth? The said *J. M.*, the father, was called as a witness on the part of the respondents, to prove, as was suggested, that no marriage had, in fact, taken place between himself and the said *E.*, and that she had a husband then living. This testimony was objected to by the respondents; and the Court of Sessions being of opinion that the testimony of the said *J. M.* was inadmissible, they adjudged that the said *J. M.* and *E. M.* were sufficiently proved to have been lawfully married at the time of the birth of their said son, and that the settlement of the paupers was in the parish of *S.* — GLYN moved to quash this order of Sessions, and to affirm the original order; and his objection was, that the testimony which had been rejected ought to have been received; to prove which, he cited *St. Peter's* v. *Old Swinford.* (*a*) — But LORD MANSFIELD seemed to think, that *thirty years' cohabitation* as man and wife was sufficient proof for the justices to found an order of removal upon. (*b*) A rule, however, was made to show cause; but on the last day of the Term, GLYN gave up his objection; and, by consent, the order of Sessions was affirmed.

(*a*) Burr. S. C. 25.

(*b*) See Wilkinson *v.* Payne, 4 T. R. 468. 470.

92. *Rex* v. *Enborn, H. T.* 6 *G.* 3. *Burr. S. C.* 551. — Two justices made an order to remove *G. W.* and his wife from *N.* to *E.*, and the order was not appealed against: afterwards, the parish of *E.*, finding that *J.* was not the wife of *G. W.*, two justices removed her, by the name of *J. M.*, single woman, from *E.* to *S.* Upon appeal it was proved, that the said *J.* was never married to the said *G. W.*, and therefore the Sessions affirmed this order of the justices. — BY THE COURT: The Sessions order must be quashed. Whatever the hardship may be in this particular case, or how doubtful soever this question might be, if it were *res integra*, yet its being fully settled, is a reason for us not to depart from it now: *stare decisis* was always a good rule, and never more so than in cases of settlement of paupers, where it would make the utmost confusion, if we should overturn settled determinations, which the justices all over *England* have been used to look upon as the rules of their conduct in similar cases. If she was not his wife, it might have been controverted; but as they have neglected to appeal, when they had a proper opportunity to show it, they are *estopped* to say so now.

The fact of marriage, on an order removing a man and *his wife*, can only be controverted on appeal to the Sessions.

93. *Rex* v. *Tarant, M. T.* 7 *G.* 3. — The defendant was overseer of the poor, and the only wealthy man in the parish. He gave three pounds to a poor man of another parish to marry a poor woman of the parish of which he was overseer. A rule was granted to show cause why an information should not go against *him* for a misdemeanor. The defendant on showing cause admitted the facts; but said, that the man and woman had long before intended to marry, and that nothing prevented them from carrying their intention into execution, but the want of a little money to begin house-keeping, which he out of charity gave them. The case of *Rex* v. *Edwards* was urged in behalf of defendant. — But upon three cases being cited in point, *Rex* v. *Market-Harborough* (*b*), *Rex* v. *Saul*, and *Rex* v. *Perrot* (*c*), THE COURT, expressing some indignation at the conduct of the defendant, and declaring that they had no doubt of his guilt from his own account, unanimously made the rule *absolute.*

A marriage, though procured by the overseer of a parish for the purpose of changing the settlement of one of the parties married, is good.

Salk. 174.

(*b*) 1 Wils. 41.

(*c*) *Ante*, pl. 87.

The proof of a *marriage in fact* is not necessary for the purpose of gaining a settlement: but proof by cohabitation, reputation, and other circumstances from which a marriage may be inferred, is sufficient.

8. C. Bl. Rep. 631.

94. *Morris* v. *Miller, E. T.* 7 *G.* 3. *Burr.* 2059.—In an action for *criminal conversation* with the plaintiff's wife, the plaintiff's counsel, in order to establish the fact of marriage, proved that articles had been made between the plaintiff and his wife, after marriage, for settling the wife's estate with the privity of relations on both sides; that they had cohabitated as husband and wife; that she had taken his name; and that she was received everywhere as his wife. The defendant also had said, in talking of his gallantries, that he had committed adultery with *Morris*'s wife. But the fact was, that they had been married at *May Fair Chapel*. The register or books could not be admitted in evidence. *Keith*, who married them, was transported, and the clerk, who was present, was dead. It was objected, on the part of the defendant, that this was not sufficient evidence of marriage; and it was agreed that a verdict should be entered for the plaintiff, and the opinion of the Court of King's Bench taken on the following question: Whether, to support an action of criminal conversation, there must not be proof of actual marriage?—LORD MANSFIELD: This sort of evidence may certainly be received, as proof of marriage, in *all cases* except two: the one is in a prosecution of *bigamy*, and the other is in an action for *criminal conversation*. I do not at present remember any action for criminal conversation where an actual marriage was not proved. Proof of *actual marriage* is always used, and understood in opposition to proof by *cohabitation*, *reputation*, and other circumstances from which marriage may be inferred. The Court, however, took time to consider of this case, and on the ensuing day LORD MANSFIELD said: We are all clearly of opinion, that in an action for criminal conversation there must be evidence of a marriage *in fact*; for acknowledgment, cohabitation, and reputation are not sufficient to support this action: but we do not at present define what may or may not be evidence of a marriage in fact. (*a*) This is a sort of criminal action: there is no other way of punishing this crime at common law. It shall not depend upon the mere reputation of a a marriage which arises from the conduct or declaration of the plaintiff himself. In prosecution for *bigamy*, a marriage in fact must be proved. No inconvenience can happen by this determination; but inconvenience might arise from a contrary determination, which might render persons liable to actions founded upon evidence made by the persons themselves who should bring the action.—Judgment of nonsuit was entered.

A marriage in *Scotland* between *English* subjects under age is good.

95. *Crompton* v. *Bearcroft, before the Delegates, M. T.* 8 *G.* 3. *Buller, N. P.* 113.—The appellant and respondent, both *English* subjects, and the appellant being under age, ran away without the consent of her guardian, and they were married in *Scotland*; and on a suit brought in the spiritual court to annul the marriage, it was holden that the marriage was good.

(*a*) In this case, 1 Bl. Rep. 632. Lord *Mansfield* is reported to have said, "Perhaps there need not be strict "proof from *the register* or by a *person* "*present*; but strong evidence must be "had of the fact; as by a person pre-"sent at the wedding dinner, if the "*register be burnt*, and the parson and "clerk are dead." And he mentioned a case on the Norfolk circuit, where, on an indictment for bigamy, *Dennison* J. ruled, that although a *lawful canonical marriage* need not be proved, yet a marriage in fact, whether regular or not, must be shown.

96. *Henley* v. *Chesham*, *T. T.* 6 *G.* 3.—*A.* with her children was removed from *H.* to *C.*, as the widow of *B.* Upon appeal, a woman was produced to prove that she was married to *B.* long before the supposed marriage between him and *A.*; but because she could not produce a *certificate* or *register* of her marriage (it being, in truth, a *Fleet marriage*), the Sessions refused to admit her evidence. — By THE COURT: The Sessions have done wrong; for the woman was clearly an admissible witness, though she could not have been so in any case where her husband was a party; because the husband and wife are in law one person (*a*); but here the husband himself, if he had been alive, might have been a witness; and wherever the husband may be a witness, the wife may.— LORD MANSFIELD remembered a case of a *Fleet marriage*, where a woman was admitted as a witness to prove the legitimacy of her own child, in ejectment, and, upon her evidence, the defendant had a verdict. In this case THE COURT sent the order back to be re-stated by the justices, as the woman ought to have been examined, and they were the proper judges of the credibility.

On the removal of a woman to her supposed husband's settlement, the illegality of marriage may be proved by the man himself, or by his *real* wife.

(*a*) Rex v. Cliviger, 2 T. R. 263. Rex v. Dinwoody, 4 T. R. 678. Bentley v. Cook, 2 T. R. 265. 269.

97. *Rex* v. *Edmonton*, *E. T.* 24 *G.* 3. EDITOR'S *MSS.* — The pauper was removed by the name of *S. P.* from *Enfield* to *Edmonton*, as to her marriage settlement. The Sessions confirmed the order, and stated, that the settlement of *S. P.*, at the time of her marriage with *W. P.*, was at *Enfield*, and the settlement of *W. P.*, at the time of the removal, at *Edmonton*; that *W. P.*, on the 21st day of *August* 1763, was baptized in the church of *Spitalfields*, as the son of *W. P.* and *S.*, and so registered; that *S.*, his mother, was buried at *Edmonton* on the 7th of *July* 1764, in the name of *S. P.*; that *W. P.* junior, and the said *S.*, then *S. E.*, were, on the 14th *September* 1783, married by licence at *Enfield*; and that, on account of their being both minors, such licence was obtained by the consent of *W. P.*, called in the licence the natural and lawful father of the said *W. P.*, and of *James Ellis*, the natural and lawful father of the pauper *Susannah*; that *W. P.* the father did, at the time of giving such consent for obtaining the licence, make the usual affidavit before the proper ecclesiastical officer, that he was the natural and lawful father of *W. P.* the younger. And the said *W. P.* gave evidence in the Court, (viz. at the Sessions,) that *W. P.* the younger was his son, but that he was never married to *Sarah* the mother of the said *W. P.* junior. —WILLES J. This is a very unfavourable case. I will consider it first on the facts, and secondly on the construction of the marriage act. The evidence for the marriage of the father and mother was the affidavit

A *female bastard* under age, married by licence with the consent of her putative father, gains *a settlement* by virtue of such *marriage* (*b*).
S. C. Cald. 485.

(*b*) Sir *William Scott*, in deciding the case of Horner v. Liddiard, in the Ecclesiastical court, in May 1799, where the question was, Whether the marriage of an illegitimate child, by licence, with the consent of her mother, after the death of her putative father, who had not appointed any guardian to the child, was valid or void within the marriage act? construed the words, "the consent of the father," or on his death, of "the guardian," or if no guardian, "of the mother," to mean legal parents, and testamentary guardian; and held *the marriage void*, because no consent had been given by a guardian appointed by the Court of Chancery, as was done in the case of Harford v. Morris, and by Ward v. St. Paul, 2 Brown, 583.; or when a father by his will names guardians for his natural child, the Court of Chancery will appoint them guardians without any reference to the master. — See also Mr. Nolan's observation on this subject, 1 Nolan's Poor Laws, 4 Ed. 299, 300, and Rex v. Hodnett, *post*, pl. 98.

of the father, and the entry of the baptism, and of the mother's burial: then the father is allowed to contradict all this, and swear that he never was married. As a Judge at *nisi prius*, I should have thought the evidence for the marriage preponderated, and I doubt whether the father be not indictable for perjury. I think the Sessions have come to a determination on the fact of the marriage, for they have confirmed the order; and that is a foundation for this Court to decide upon, without sending the case back. As to the construction of the marriage act, it ought in this case to be liberal. We are warranted in considering a putative father as within it, by the case of *Rex* v. *Cornforth* (*a*), where the expression in the statute of *Philip & Mary* is similar to that in the marriage act: that too was a criminal proceeding. The object of the marriage act was to prevent clandestine marriages of minors, without the consent of those who have authority over them. That purpose is better answered by the consent of a putative father than of a guardian in Chancery. — ASHHURST J. As to the facts I shall say nothing, but I am against sending the case back, because I have no doubt as to the law. The case of *Rex* v. *Cornforth* (*b*) is stronger than the present, and authorizes us in putting the construction I wish, as by that construction the purpose of the act is satisfied. — BULLER J. There is no doubt but the Sessions have returned *evidence* instead of *facts;* but if no conclusion they could have drawn from that evidence would vary the law upon this case, it is not necessary to send it back. They have, however, stated enough to show what they did conclude, viz. that there was no marriage between the father and mother. As to the father's affidavit, it was made from a mistake of the law, and therefore no perjury. There is nothing in the objection to the father's testimony. The fact then is, that the son, being *a bastard*, was married by *licence*, while he was *under age*, with the consent of his *putative father*. It is not necessary to give a decisive opinion on the construction of the marriage act; for either this case is within the act, or it is not. If within it, there is nobody to consent but the putative father, and nobody else can be meant. If, by a more strict construction, the act is held only to extend to cases where there is a lawful father, then this case is not within it, and no consent was necessary. The case of *Rex* v. *Cornforth* is a strong authority, and the form in which it came on does not weaken it. It was a determination on the construction of a statute, and therefore it made no difference whether it was a civil or a criminal case. — The order was confirmed.

(*a*) 2 Str. 1162.

(*b*) 2 Str. 1162.

A marriage between two *infants*, celebrated by means of a procured *licence*, and without the consent of either parents or guardians, is *void* by the 26 G. 2. c. 33. although both the parties are *of ultimate; and no settle-*

98. *Rex* v. *Hodnett, H. T.* 26 *G.* 3. 1 *T. R.* 96. — *M. M.*, an illegitimate child, was born in the parish of *H.* On the 10th of *January* 1782, she, being then under 21 years of age, was married to *R. T.*, who was born in the parish of *S.*, and who was also then under 21 years of age, and illegitimate, as appeared by the several registers of her baptism, and the evidence of the mother of the said *M. M.* The putative father of *R. T.* died in 1779, and his mother died in 1764. The putative father of *M. M.* died several years previous to her marriage; and her mother in the year 1772 married *R. L.*, who, as well as his wife, is still living. Neither *R. T.* the husband, nor *M. M.* the wife, had ever any guardian or guardians appointed for either of *them, nor was any consent given to their marriage by any person*

acting in that character, or by the parent or parents on either side. No witnesses appeared on procuring the licence from the surrogate, deposing to the consent of the parents or guardian on either side having been obtained, or that the parties to be married were of the age of consent; but the person who applied for a licence, being the said *R. T.*, swore that the parties were both of age. — The question for the opinion of the Court turns on the validity of this marriage. — LORD MANSFIELD C. J. Before this act of parliament passed, by the laws then in being, if a man and woman made a contract in private *per verba de præsenti*, and kept it a secret, and afterwards there was a public marriage solemnized by either of them, and issue born of that marriage, nevertheless the private contract took place of the subsequent marriage, because the canon law compelled a strict observance of these contracts, and decreed them to be solemnized in the face of the church. Therefore clandestine marriages were so far to be sure *practicable*, but they were contrary to law. The law of *England* executed by the ecclesiastical courts prohibited it, and made it unlawful to marry any person in private; so that no clergyman of reputation dared to marry any persons without either *licence* or *banns*. If they married with licence, there was an oath that the parties were of age, or, if under age, that they had the consent of parents or guardians. If by banns, it was no objection to the marriage that the parties were under age. All other marriages were illegal, but not being vacated, they still went on. Therefore this act was passed in order to prevent these illegal practices, which were become so very enormous, that places were set apart in *the Fleet* and other prisons for the purpose of celebrating clandestine marriages. The Court of Chancery, on the ground of its illegality, made it a contempt of the Court to marry one of its wards in this manner. They committed the offenders to prison; but that mode of punishment was found ridiculous and ineffectual. Then this act was introduced to remedy the mischief, and, in fact, only made that less practicable which was before illegal. So that I cannot go into arguments on the impolicy of the law; and if I could, it would be sufficient to say, that several attempts have been made to repeal this law in parliament, all of which have proved ineffectual. Then the question is, What is the law? The meaning of the act is, that where there is the consent of a father or guardian lawfully appointed, or of a mother, or guardian appointed by the Court of Chancery, the marriage shall be valid; but here there was no consent by any one; consequently, in my opinion, it is void by the marriage act. There is no reason to except illegitimate children, for they are within the mischiefs intended to be remedied by the act. The rest of the Court concurred, and the order removing the paupers from *S.* to *H.* was confirmed.

ment can be gained under it.

99. *Rex* v. *Brampton*, *M. T.* 49 *G.* 3. 10 *East*, 282. — Evidence that *British* subjects in a foreign country being desirous of intermarrying, went to a chapel for that purpose where a service in the language of the country was read by a person habited like a priest, and interpreted into *English* by the officiating clerk, which service the parties understood to be the marriage service of the church of *England*, and they received a certificate of the marriage, which was afterwards lost, is sufficient whereon to ground

Evidence of marriage.

a presumption (nothing appearing to the contrary) that the marriage was duly celebrated according to the law of that country, particularly after eleven years cohabitation as man and wife till the period of her husband's death. — And such *British* subjects being attached at the time to the *British* army on service in such foreign country, and having military possession of the place, it seems that such marriage solemnized by a priest in holy orders (of which this would be reasonable evidence), would be a good marriage by the law of England as a marriage contract, *per verba de præsenti* before the marriage act; marriages beyond sea being excepted by that act. And it would make no difference if solemnized by a Roman Catholic priest.

A person whose baptismal and surname was *A. L.* was married by banns by the name of *G. S.*, having been known in the parish where he resided, and was married by that name only from his first coming into the parish till his marriage which was about three years: Held, that the marriage was valid, and therefore the wife and children entitled to the husband's settlement.

100. *Rex* v. *Billingshurst*, *M. T.* 55 *G.* 3. 3 *M. & S.* 250. — The Quarter Sessions upon appeal confirmed an order of removal of *G. S.*, his wife and children, from the parish of *S.* to *B.*, subject, &c. — The pauper, whose baptismal and surname is *A. L.*, and whose legal settlement is in *B.*, was married to his present wife in the parish of *L.*, by banns, about four years ago, by the name of *G. S.* Previously to his marriage he had resided about three years at *L.*, during which time and from his first coming into that parish, and during all the time he remained there, and afterwards until and at the time of his removal, he was known by the name of *G. S.* only. The wife and children have no settlement in *B.*, unless they have acquired one by the marriage. — LORD ELLENBOROUGH C. J. All that the law requires on this subject is, that marriages shall be solemnized either by licence or publication of banns, otherwise the stat. 26 *G.* 2. *c.* 33. § 8 declares that they shall be void. The statute does not specify what shall be necessary to be observed in the publication of banns, or that the banns shall be published in the true names, but certainly it must be understood as the clear intention of the legislature that the banns shall be published in the true names, because it requires that notice in writing shall be delivered to the minister of the true christian and surnames of the parties seven days before the publication, and unless such notice be given he is not obliged to publish the banns. The question then is, Has there been in this case that which is required, a due notification by the minister on a *Sunday* in time of divine service, of one of the persons intending to contract marriage? Now it appears that such notification has been made by the name of *G. S.*, by which name alone the party was known in the place where he resided, and which he had borne for three years prior to the celebration of the marriage in that place, and that he was not known there by any other name. It would lead to perilous consequences if, in every case, an inquiry were to be instituted at the hazard of endangering the marriage of a woman who had every reason to think she was acquiring a legitimate husband, whether the name by which the husband was notified in the banns were strictly his baptismal name, or whether at the period of his baptism he may not have received some other name. What the consequences might be of encouraging such inquiries, as to the avoiding of marriages and bastardising the issue of them, it is not very difficult to imagine. The object of the statute in the publication of banns was to secure notoriety, to apprize all persons of the intention of the parties to contract marriage, and how can *the object* be better attained than by a publication in the name by

which the party is known? If the publication there had been in the name of *A. L.* it would not of itself have drawn any attention to the party, because he was unknown by that name, and its being coupled with the name of the woman, who probably was known, would, perhaps, have led those who knew her and knew that she was about to be married to a person of another name, to suppose either that these were not the same parties, or that there was some mistake. Therefore the publication in the real name, instead of being notice to all persons, would have operated as a deception, and it is strictly correct to say that the original name, in this case, would not have been the true name within the meaning of the statute. On these grounds I think that the act only meant to require that the parties should be published by their known and acknowledged names, and to hold a different construction would make a marriage by banns a snare, and in many instances, a ruin upon innocent parties. The Court, therefore, cannot lend itself to a construction which would be pregnant with such consequences. —LE BLANC J. This question comes before the Court under circumstances which strip it of any thing like fraud. The pauper, who was known in the parish by the name of *G. S.* only, is notified to the minister by that name, and the banns are regularly published in that name in the parish church. And the objection is that the marriage is null and void because the name of *G.* is not the true name by which he was baptized, and because *Smith* is not his true surname, wherefore it is argued that this was a marriage without publication of banns. It is material to look to the marriage act in order to see in what way it directs the banns to be published. The only clause which directs the true character and surnames to be used, is the second, and that has reference to the notice to be given to the minister, it requires that a notice in writing shall be delivered of the true christian and surnames of the persons to be married. A subsequent clause (§ 8.) forbids any person to solemnize marriage without publication of banns unless by licence under the pain of being adjudged guilty of felony, and provides for the punishment of persons who shall so do, and then it concludes, "that all marriages solemnized without publication of "*banns or licence* shall be null and void to all intents and purposes." To be sure the argument here must necessarily be, that a marriage by banns which are published not in the true christian and surnames of the parties is a marriage without publication of banns. But I cannot accede to that argument, recollecting what was the object of this provision in the marriage act. The object of it was to insure notoriety to the transaction, and I think the Court, recollecting that, cannot say that a marriage by banns published in the names by which alone the party was known, is a marriage without publication of banns. The argument is, that a marriage by publication of banns means by publication of banns in the real names of the parties only, but the statute has said no such thing. If the banns be published in the names of the party by which alone he is known, and there is no fraud, whether that be the true christian or surname of the party or not, I think the marriage is good within the meaning of the statute. Therefore I am of opinion, that upon the present occasion, every thing was done that was sufficient to give that notification of the marriage, which it was the object of the marriage act to insure.—*PER CURIAM: Order of Sessions* confirmed.

A marriage by licence not in the man's real name, but in the name which he had assumed because he had deserted, he being known by that name only in the place where he lodged and was married, and where he had resided sixteen weeks, was held a valid marriage.

101. *Rex* v. *Burton-upon-Trent*, *H. T.* 55 *G.* 3. 3 *M. & S.* 537. — Upon an appeal against an order for the removal of *Elias Price* from *G.* to *B.*, the Sessions confirmed the order, subject, &c. The pauper's father who was settled at *Desford*, and whose real name was *Joseph Price*, was married at *Leicester* by licence, by the name of *Joseph Grew*, having changed his name to *Grew* because he had deserted from the army, and he was known by that name only at *Leicester*, where he lodged at the time of his marriage, and where he had resided sixteen weeks. He never passed by any name but *Price* in his father's family, and in the place where they resided. His wife did not know his real name till a fortnight after the marriage, when he told it her. The pauper was the issue of this marriage, and was born at *B.*, and after his birth his parents were married by the true name. The Sessions considered the first marriage as invalid, and therefore that the pauper was not entitled to his father's settlement. — LORD ELLENBOROUGH C. J. There is not any occasion to trouble the other side. If this name had been assumed for the purpose of fraud, in order to enable the party to contract marriage, and to conceal himself from the party to whom he was about to be married, that would have been a fraud on the marriage act and the rights of marriage, and the Court would not have given effect to any such corrupt purpose. But where a name has been previously assumed, so as to have become the name which the party has acquired by reputation, that is, within the meaning of the marriage act, the party's true name. The same law has been recognized in the case of negotiable instruments, where if a party sign an instrument in a name assumed by him for other purposes a considerable time before, such signature will not amount to a forgery; but otherwise, if he assume a name by which he had never been known before for the purpose of fraud.(*a*) Now here the party assumed the name for the purpose of concealment, and not of fraud upon the marriage, and he was known by that name alone for sixteen weeks in the place where he was married. It seems to me, therefore, that he had acquired the name, and that to have had a licence in any other name would have been a fraud on the marriage act — LE BLANC J. The name was assumed by the father for the purpose of concealing himself as a deserter from His Majesty's service, and not with a view to impose upon the woman whom he married. — BAYLEY J. The Sessions may always draw the line whether the name was assumed for a fraudulent purpose, as it regards the marriage or not. — Orders quashed.

III. *Of the Wife's Settlement in Right of the Husband.*

The husband's settlement, if known, is, by the marriage, communicated to the wife.
S. C. Sett. and Rem. 66.
1 Sess. Cas. 85.

102. *Appotens* v. *Dunswell*, *E. T.* 11 *W.* 3. *MSS.* — A single woman, being legally settled in the parish of *D.*, came into the parish of *A.*, and there married a strolling player, who upon his death-bed declared, that he was *born* in the parish of *W.* The woman was removed, by an order of two justices, from *A.* to *D.*, the place of her maiden settlement. — FORTESCUE objected to this order, that the woman's settlement was in the place where her husband was born. — THE COURT: Although the husband may be settled in the parish of *W.*, yet the wife cannot be said to be

(*a*) Rex *v.* Shepherd, 2 East's P. C. 967. Aickle's case, *ib.* 968.

last legally settled there, according to the statute 13 & 14 *Car.* 2. c. 12. for she never was at that place (*a*), and therefore could not live with him forty days irremovable as part of his family: so if a man have an estate in a parish, and do not live there, he cannot be sent there; but if he ever lived there forty days, he will be settled there.

(*a*) But see the following cases.

A widow shall be sent to her husband's last settlement, though she never was at the place in his lifetime, if she has not gained a new settlement herself. S. C. 1 Ld. Ray. 1332. 1 Str. 580. 8 Mod. 169 Fort. 320. Andr. 350.

103. *St. Giles* v. *Eversley, H. T.* 10 *G.* 1. 2 *Sess. Cas.* 116. — *W. C.* was born in the parish of *St. G.*, and was bound apprentice for seven years in *E.*, where he served two years; but his master failing in his circumstances, he removed back to *St. G.*, where he married, had three children, and died. The wife and the three children were removed, by an order of two justices, from *St. G.* to *E.* — REEVE: The wife cannot take the benefit of her husband's right of settlement after his death, as she had not taken any advantage of it in his lifetime, but had waived it, and fixed in another place.— EYRE and FORTESCUE Js. The wife and children must be sent to the last legal settlement of the husband and father; for his settlement is their settlement, and *birth* makes no settlement but in the case of a *bastard*, who is not considered as the child of any, and is therefore a vagrant, and can gain no settlement but by birth. — The order was confirmed.

A wife cannot gain a settlement separate and distinct from her husband during the coverture.

104. *Rex* v. *Aythorp Rooding, M. T.* 30 *G.* 2. *Burr. S. C.* 412. — *W. G.* the pauper's husband was legally settled at *W. R.*, from which place he went away, and deserted his wife and children. The wife left *W. R.*, and went, with her children, and lived forty days, without her husband, in a copyhold tenement of her husband's own at *A. R.* Legal notice to depart from this tenement was given to her within the forty days by the parish-officers of *A. R.*; which she not doing, two justices removed her from thence to the parish of *W. R.*, as a person likely to become chargeable. — THE COURT were unanimously of opinion, that although the wife could not gain a settlement for her husband by residing forty days upon his own estate, yet that she was irremovable from the property of her husband upon being only likely to become chargeable: for she had a natural, or at least a matrimonial, right to go to her husband's estate; and as there does not appear to be any dissent of her husband, it shall be presumed that he consented.

IV. *Of the Wife's Settlement in her own Right.*

The wife's settlement in her own right is not extinguished by her marrying a *Scotchman*, who had no settlement in England, but remains to her and her children.

105. *Rex* v. *Wilsborough Green, M. T.* 12 *Ann. Foley*, 249.— The order of two justices recited, that "whereas complaint has "been made unto us, by the churchwardens and overseers of the "parish of *D.*, that *A.*, the wife of *A. P.*, with *H.* her son, "aged three years, is come into the said parish of *D.*, and is "likely to become chargeable to the said parish of *D.*; and "that the said *A. P.* is *a Scotchman*, not having any legal "settlement in *Great Britain*; which complaint we do ad-"judge to be true; and we do adjudge the said *A.*, with her "said child, to be likely to be chargeable to the said parish of "*D.*; and we do also adjudge the place of their last legal settle-"ment to be at *W. G.*; and therefore order, that they remove her "and her child thither, as being *A.*'s settlement before her mar-"riage."—AN EXCEPTION was taken to this order, that the pauper

was a married woman, and by her marriage she ought to be settled where her husband was; and that therefore this order could not be right; for if the justices may send away a wife, it is making a divorce between husband and wife; and as he is a *Scotchman*, they ought to send her, as part of his family, to the bordering counties of *Scotland*, according to the statute 39 *Eliz. c.* 4. § 6.—

In the report of this case by Gilbert it appears that he was at *Dunkirk*. See Gilb. Rep. 97.

THE COURT held, that although she was a married woman, yet as her husband had no settlement, she could not gain any other settlement than that which she had before marriage: and as for divorce, it was none; for the husband might go to her as well at *W. G.* as at *D.*; and as to the husband, nothing in the order appears as to him, whether in *England* or not; so the order was by THE WHOLE COURT confirmed.

So if her husband's settlement is not discovered. S. C. Cases of Sett. 89.

106. *Appotens* v. *Dunswell*, *M. T.* 1 *G.* 1. 1 *Sess. Cas.* 80.— On a motion to quash an order of removal, it appeared that a woman had married a strolling player, who afterwards left her upon the parish; and not being able to discover the last place of her husband's settlement, two justices removed her to the parish *A.*, where she was last legally settled previous to her marriage. The counsel for the respondents relied upon the case of *Rex* v. *Wilsborough Green* (*a*), where an order was made for removing *M. C.*, the wife of a *Scotchman*, in the service of QUEEN ANNE, to the place where she was settled previous to her marriage, her husband not having gained any settlement for himself in *England*. But on the other side it was contended, that the case is materially different from the present case; for that a man born out of *England* can have no natural settlement here, and therefore an acquired settlement must be shown; but that the husband of the present pauper was a native of *England*, and therefore must be presumed to have a settlement somewhere within the kingdom.— THE CHIEF JUSTICE: It does not appear here but that the wife is sent from her husband; if it had been said that the husband was dead, and that no settlement appeared, I should have thought the order good. Besides, if a woman marry a man who has a settlement which he never uses, and she never was there, she cannot be said to be last legally settled there; for the act requires forty days' residence: so if a man has an estate in a parish and do not live there, he cannot be sent there; but if he had lived there forty days, he had been settled there. — Quashed.

(*a*) *Ante*, pl. 105.

A woman who marries a man without a settlement does not thereby lose her own.

107. *St. Giles's* v. *St. Margaret's*, *Westminster*, *E. T.* 2 *G.* 1. 1 *Sess. Cases*, 104.— *S. E.*, after having gained a settlement in her own right, married an *Irishman* who had not gained any settlement in *England*. The question was, Whether, on her becoming chargeable, she should not so far partake of the circumstances of her husband as to lose her former settlement? for that if she did not partake of the fate of her husband it would cause a divorce. On the other side the cases of *Rex* v. *Wilsborough Green* (*b*) and *Marston* v. *Hanway* (*c*) were cited; and it was observed that the man was dead, so that it could cause no separation.—THE COURT seemed to think that the settlement was revived, being only in suspense during the life of the husband; and in *H. T.* 3 *G.* 1. it was adjudged that she should be sent to her settlement before marriage.

(*b*) *Ante*, pl. 105.

(*c*) *Post*, p. 70. *notis.*

The wife's settlement returns

108. *Rex* v. *Westerham*, *H. T.* 12 *G.* 1. EDITOR'S *MSS.*—Two justices removed *E. P.*, and her child of nine years old, from the

parish of *C.* to the parish of *W.*, as to the place of the mother's settlement previous to her marriage. The Sessions on appeal quashed the order of the two justices, and stated specially, that "It appeared by the testimony of *E. P.*, that the said *E. P.* was, "at the time of the said order made, a married woman; and that her "husband was one *T. P.*, who was born in *Wiltshire*, but in what "place or parish he had a settlement he never informed her, nor "did she know; but that he was run away and still living, for what "she knew." These orders being removed into the Court of King's Bench, THE COURT quashed the order of Sessions, and confirmed the order of the two justices; for that whether the husband be living or dead signifies nothing, for unless it appear that he has a settlement the woman must be sent to the place of her settlement before marriage. Suppose the husband was born on the high seas, or in *Ireland*, &c., if the woman might not be sent to the place of her settlement before marriage, she might be starved.

whenever it appears that the husband's settlement cannot be discovered. S. C. Foley, 288. S. P. Str. 683.

109. Rex v. *St. Botolph, Bishopsgate, H. T.* 28 *G.* 2. *Burr. S. C.* 367.—*E.*, the pauper, had acquired a settlement of her own before marriage by service to Mr. *F.* in the parish of *St. Botolph*; she then married an *Irish* sailor, who had no settlement as far as she knew of, and who was alive as she believed; having, two months ago, heard that he was so. The Sessions held *St. Botolph*'s to be her legal settlement, and removed her and her child thither as to her last legal settlement. It was objected in the Court of King's Bench, that it is a settled point, that if a woman having a settlement marry a man who has none, her settlement is suspended during the coverture; and that she cannot be removed during the coverture to her maiden settlement, because it would divorce a man from his wife: and the case of *Rex* v. *Norton* was cited.—RIDER C. J. now delivered the resolution of the COURT: We are of opinion, that both the mother and the child are settled in *St. Botolph*'s.—I shall consider it, FIRST, Independently of the authorities cited; and, SECONDLY, As it stands on the authorities. FIRST,—Independently of the authorities. The act of 43 *Eliz. c.* 2. has two defects; viz. the want of due regulations and employment of the poor in their proper parishes, and the want of restraint from going into other parishes. Now, in order to remedy these defects, the act of 13 & 14 *Car.* 2. *c.* 12. was made; which enumerates the several cases of the defects of the former law concerning the settling of the poor, and then provides a remedy for them. This act first created the right of settlement in parishes. The subsequent acts I will not now meddle with; for this brings the case of the wife to a point. Her case may be considered within this act only, viz. Whether she had a settlement in *St. Botolph*'s or not? Now *St. Botolph*'s was, certainly, once her settlement; and would so continue till she should have gained another: and it appears that she never has gained another since. The first and the last of these positions are clear. The only question, therefore, is on the second, viz. Whether the former settlement in *St. Botolph*'s was determined before she is supposed to have gained a new one? But this former settlement could not cease; but would continue during life, or till a new one should be gained: there is no case where a settlement ceases by any other method. A man cannot give away, or release, or suspend his settlement; for the public is concerned in it as well as himself. The chief argument *made use of è contra*, is from the

The settlement of a wife in her own right is not *discontinued* by her marrying a man who has no settlement, but *continues and remains* in her during coverture.

See Rex v. Eastbourne, 4 East, 103.

constant rule of a wife's acquiring a settlement from her husband, or a child from its parent; as in the case of *St. Giles's, Reading.* (*a*) But the case of *St. Giles's, Reading*, is not *ad idem;* for here she gets no settlement from her husband; there, she did: so that the reason of that case fails here. Indeed, if a man has a settlement, his wife and children will be entitled to it; and their settlement must be the same with his: but if he has none, they can then have none from him: but the wife's maiden settlement continues and remains as it was. It is objected, that this will separate the wife from her husband, and amount, in effect, to a divorce: but they are separated already; for he has left her. And indeed, since he has no settlement of his own, he may as well go to her in her own maiden settlement, as in any other place. It may be also said, that this will be a hardship upon the parish where the woman was settled before her marriage, as it will oblige that parish to maintain the woman after her coverture, when they ought to be discharged of her. But that is no hardship upon them, if her former settlement was never determined, because, as long as that continues, it is their duty to maintain her. SECONDLY, I will consider this question as it stands upon the cases and authorities. There are five cases with regard to the wife; *Rex* v. *Wilsborough Green*, in point, both as to the mother and child (*b*): *Appotens* v. *Dunswell* (*c*), where both orders were quashed, because it did not appear that the husband was dead; but PARKER C. J. said, that if the husband had been dead, she ought to be sent to her maiden settlement: the case (*d*) between *St. Giles's* v. *St. Margaret's*: *Rex* v. *Chidingstone* (*e*), where it was held, that, whether the husband be alive or dead, the wife ought to be sent to the place of her settlement before marriage: and *Hanway* and *Marston* (*g*), where all the family were vagrants, and the mother was sent to the place of her maiden settlement, and the order was confirmed as to her, though not as to the children. Now four of these cases are in point, that the wife's maiden settlement remains, unless she acquires another: and the FIFTH is pretty nearly so. But the case of *Rex* v. *Norton* has been cited, and much relied upon, as a direct authority to the contrary; and I frankly own, that I cannot reconcile this case to those I have mentioned. It does not appear in the case of *Rex* v. *Norton* whether the other cases were cited, or what was the particular reason of the resolution. However, if they were cited and over-ruled, we may, for the same reason, over-rule that resolution (*h*); for, upon the last determination, if the preceding cases

(*a*) *Ante*, pl. 107.

(*b*) *Ante*, pl. 105.

(*c*) *Ante*, pl. 106.

(*d*) *Ante*, pl. 107.

(*e*) Burr. S. C. page 368.

(*g*) Fort. 217.

(*h*) The case came before the Court in H. T. 12 G. 2. Two justices removed Ellen Birmingham from Stratford to Norton, and the Sessions confirmed the order, and stated the following case: The pauper, at the time of her marriage with George Birmingham, was settled at Norton. Her husband was an Irishman, who had several years before left his wife, and had continued absent from her ever afterwards. It was not known at the time of her removal where he was: but it appeared that he had not gained any settlement in England. The objection to the removal was that the *wife's settlement* was suspended during the coverture, and the case of Hanway v. Marston, Fortesc. Rep. 217. where it is said, by *Parker* C. J., "Where a "woman has a settlement and marries, "her settlement is gone and suspended, "at least if her husband has a settle- "ment; but if he has none, then she "retains that of her own," was cited; and also Shadwell v. St. John, Wapping; yet the Court quashed the order, because they would not presume the husband to be dead, the Sessions having stated, "that it was not known "where he was or resided." Burr. S. C. 122, 123. See also Burr. S. C. 816.

do appear to clash, we must determine upon the weight of the several cases that appear to us; and if the other cases were not cited, we may reasonably suppose that the case was not fully considered.

V. *Of the Removal of the Wife.*

The wife may be removed alone to her husband's settlement, unless it appear that they are thereby separated from each other.

110. *St. Michael's in Bath* v. *Nunney in Somerset*, *H. T.* 9 *G.* 1. *Str.* 544. — Two justices removed *Elizabeth Daniel*, a married woman, and her child, from the parish of *Nunney* to *St. Michael in Bath*, as to the place of her settlement by marriage. The order stated, that the husband was living, and that the wife had intruded herself into the parish of *Nunney*, and was likely to become chargeable. It was moved to quash the order, because it did not appear that the husband was, at the time of the removal, in the parish of *St. Michael*; so that it may be they sent the wife away from the husband. — 3RD PER CURIAM: We cannot intend he was not. If he had been in the parish from which she was sent, that indeed would vitiate the order (*a*); but as neither of these facts appear against the order to satisfy us that it is bad, we are not to presume it to be so, and therefore it must be confirmed.

Burr. S. C. 815.

(*a*) See Rex v. Eastbourne, 4 East, 103, and Rex v. Eltham, 5 East, 113.

On the removal of a wife to her husband's settlement, he shall be presumed to be there, unless the contrary appears.

111. *Rex* v. *Ironacton*, *M. T.* 14 *G.* 2. *Burr. S. C.* 153. — Upon complaint made by the churchwardens and overseers of *P.*, that *M.* the wife of *W. K.* and eight of their children (naming them) had intruded into *P.*, two justices removed them from thence into *I.*, which they adjudged to be the last legal settlement of the husband; and, upon appeal, the Sessions confirmed the order. — YEATES, to quash these orders, objected, that the wife and children were removed *without the husband*, and that this amounted to a divorce between the man and his wife. — THE COURT. How does it appear that the husband was not at *I.* at that time? We cannot *suppose* it to be wrong unless it *appears* so. The supposition is, rather, that he is at the place where he is adjudged to be last legally settled. The intrusion complained of in *P.* is only by the *wife* and *children*. How could the justices remove the *husband* when he was not complained of? The order is right.

On the removal of a wife to "the place of her *last settlement*," it shall be intended her settlement in *right of her husband*.

112. *Rex* v. *Higher Walton*, *H. T.* 14 *G.* 2. *Burr. S. C.* 162. — A motion was made to quash an order of Sessions, confirming an order of two justices for the removal of *M. B.*, the wife of *S. B.*, and her daughter to *H. W.*, which they adjudged to be their last legal settlement. An objection was made, that it did not appear whether it was this woman's settlement in her *own right*, or in the *right of her husband*; and nothing shall be intended, and if it was not her settlement in right of her husband, the justices had no power to send her hither. — THE COURT: It is adjudged to be her last legal settlement; and she could not be settled at any other place than where her husband was settled: and we are not to intend any thing to vitiate the order. Therefore we cannot intend that the husband's settlement was not at *H. W.*

If a foreigner, the husband of an English

113. *Rex* v. *Carleton*, *T. T.* 15 *G.* 3. *Burr. S. C.* 813. — *J.* the wife of *S. O.*, and their children, were removed from *H.* to *C.* *John Tyas*, the father of *J. O.*, in the year 1727 came to reside in

woman whose father was certificated, live with and support his wife and family in the certificated parish, but gain no settlement, his wife, although she asks temporary relief of the certificated parish, cannot be removed from him to the parish from which her father was certificated and in which she is settled by parentage.

H. under a *certificate*, from *C.* Whilst *Tyas* resided in *H.* under the certificate, *J.* his daughter was born there, and continued to live with him, and until she was upwards of 21 years of age: she afterwards *took a house* in *H.*, and resided therein until she was married to *S. O.*, who, upon his marriage, resided with *J.* his wife in her said house, and continued to reside with her therein from the time of their said marriage, which was in the month of *September* 1766, until she and her children by the said *S. O.*, were removed on the 27th day of *January* last, *from the said S. O.*, and *from his said dwelling-house* wherein he then lived and still continued to reside: *S. O.*, from the time of his said marriage, followed the business of a cloth-dresser, and thereby maintained himself, his wife, and his family, until a little time before the removal; when his *wife and children being taken ill of a fever*, she applied to the overseers of *H. for relief*. *S. O.*, her husband, afterwards applied to a justice of the peace for an order for relief, and obtained one; and they were *actually relieved* by the overseers of *H.*, in pursuance of the said order. The reason of *J.*'s asking relief was because she and her children were *ill of a fever*; and she was not recovered at the time she was removed, and could hardly ride: they were disbanded of every thing; the landlord seized all their goods for rent: she had hired the house before their marriage; and had resided therein with her husband until she and her children were removed; her husband still continued tenant and resided in the said house, and acquired his living by his own labour and industry: but he was an *Irishman*, and had *not* gained any settlement in *England*: his wife and children were SEPARATED *from him* by the said removal, and still continued so to be. The Sessions confirmed the order of removal. — THE COURT were clear, that the Sessions were wrong; and that their order must be discharged. A woman cannot be removed from her husband: as an authority for which, they referred to the before-mentioned case of *St. Michael's in Bath* and *Nunney*. (*a*) This is not like the case of the husband being *dead*, or having *left* his wife. Here, the husband is alive; resides at *H.*; and follows the business of a cloth-dresser there, by which he has maintained his family for many years, and till they were taken ill of this temporary fever, which obliged them to apply for relief. The parish have had the benefit of his labour nine years. The man is settled in a house, and carries on business in this place. There may be no business for a cloth-dresser at *C.* at all; or this man may have no acquaintance there. He may starve there, though he could maintain his family at *H.* It is a cruel behaviour. — The order of Sessions was quashed.

(*a*) *Ante*, pl. 110.

If the husband be abroad, and the place of his settlement not known, the wife may be removed to her maiden settlement, although it is uncertain whether her husband be *alive or dead*.

114. *Rex* v. *Ryton*, *H. T.* 18 *G.* 3. *Cald.* 39. — *S. K.*, the wife of *B. K.*, a soldier in a regiment of foot then in *America*, and *H.* their daughter, were removed from *W.* to *R.*: the parish of *R.* appealed, and the counsel for the respondent stated to the Court that *S. K.*, had obtained a legal settlement in *R.* when she was a single woman, and before her marriage with *K.*, by being hired for a year, and serving a year under that hiring, in the same township, to one *J. R.*; that she afterwards intermarried with *K.*, by whom she had issue the pauper *H.*; that *K.* was then in *America*; that it was not known whether he was living or dead; that the *place* of his legal settlement was not known; and that therefore

the pauper had been removed to the settlement she had gained before her marriage; but the counsel for the appellants objected to the respondents going into evidence of the facts, and prayed that the said order of removal might be quashed, as it did not state that *B. K.* was dead, or that any evidence was given that he was dead, or that the place of his settlement could not be known: but the Court received evidence to prove the settlement of *S. K.* before her marriage, and confirmed the order of removal.—LORD MANSFIELD: The Sessions say, that the evidence laid before them proved that which would make the order of two justices right; and I think that upon the evidence the Court of Quarter Sessions did right.—ASHTON, WILLES, and ASHHURST Js., concurred, the rule was discharged, and both orders affirmed.

115. *Rex* v. *Hinxworth*, *H. T.* 18 *G.* 3. *Cald.* 42.—*J. G.* the pauper, *S.* his wife, and their five children, resided in the parish of *C.*, in the year 1776. Prior to the 17th of *June* 1776, *J. G.* left *C.*, and abandoned his wife and children. In his absence, and without his examination, upon a complaint of the officers of *C.* that his wife and children had become chargeable, two justices, on examination of the wife and on other circumstances, removed them by an order, dated the 17th of *June* 1776, from *C.* to *H.*, as the place of the legal settlement of *J. G.* (*a*), neither of the children having gained any settlement in their own right: the said order was never appealed from by the parish of *H.* *J. G.* afterwards went to his wife and children at *H.*; to which parish they became chargeable. The magistrates, upon examining *J. G.*, and on other evidence, adjudged his settlement to be at *C.*; and by an order dated the 13th day of *October* 1776 removed them to *C.* From this order of removal the parish of *C.* appealed, on the ground that the order of the 17th *June* 1776, being unappealed from, was conclusive as to the whole family; because the wife had been removed to *H.*, as to her husband's settlement: a fact which the parish of *H.*, by not appealing, had admitted; but the Sessions over-ruled the objection; and confirmed the order which removed *J. G.*, but vacated the order which removed *S.* the wife and the *five children*. The wife and the five children went to *J. G.* at *C.* The magistrates of *C.*, by an order dated 20th *January* 1777, removed the five children from *C.* to *H.*, as the place of their legal settlement. From this order the parish of *H.* appealed, and the Sessions confirmed the order of removal, except as to the two youngest children, who were by reason of their tender years inseparable from their mother upon account of nurture. The principal question was, *To what extent* the first order was conclusive, the parish of *H.* not having appealed from it? that is, Whether it decided upon the settlement of the husband, and that he and all his family were thereby fixed in *H.*, from the justices having removed *S. G.*, calling her the wife of *J. G.*, and removed her as such to the place of her husband's settlement, especially as the case also expressly found this fact?—LORD MANSFIELD: There is nothing

But if the absence of the husband be only temporary, and the wife be removed to any place, *eo nomine*, as *the wife*, it shall be presumed that the place to which she was removed was the place of her husband's settlement, although it is not so stated in the order of removal; for the general rule is, that the settlement of the wife depends upon the settlement of her husband.

(*a*) The order did not in terms set out this fact. It only described her as *the wife of Joseph Griffin*. As this therefore was only matter of inference, though the true and the legal inference, and the principle, no doubt, upon which these magistrates acted, yet it ought not to have been stated as a fact. —Note by Mr. Caldicott.

at all in this case. The first order unappealed from is conclusive. It is agreed on all hands, that it would have been so, had the settlement of the husband been expressly stated in that order to have been at *H.* Then the question made is, Whether there arises a necessary implication, that upon the face of the order his settlement is there? Now the general rule of law is, that the settlement of the wife and children must depend upon that of the husband: it is true, there may be special and excepted cases; as where the husband has no settlement, or cannot be found to give an account of it: and these would be exceptions from the general rule. But, unless such special circumstances are stated, we are bound to presume in favour of the general rule. The parish of *H.* have neglected to appeal at the time they were aggrieved; and their being too late now is their own fault.—WILLES, ASTON, and ASHHURST Js., concurring, the order of justices dated the 17th of *June* 1776, removing the wife and children from *C.* to *H.*, was affirmed; and the other orders discharged.

The removal of a *feme covert* is evidence of the husband's settlement.

116. *Rex* v. *Leigh, M. T.* 19 *G.* 3. *Dougl.* 45.—Two justices removed a married woman and her child from *E.* to *L.*, in the absence of the husband. On an appeal this order was quashed. The husband afterwards returning to *E.*, he, together with the wife and child, were removed, under a new order, to *L.*, which last order the Sessions confirmed: but, upon a *certiorari*, and a rule to show cause why it should not be quashed, the *Solicitor-General* now gave it up, as not to be supported, since a late determination of the same question in the case of *Rex* v. *Hinxworth*. (*a*)

(*a*) *Ante*, pl. 115.

The settlement of a widow, which she has gained in her own right, cannot be changed by evidence that she was afterwards married to a man who in his lifetime told her that he was *born* in Yorkshire; for this declaration is not sufficient evidence of the husband's settlement.

See same case, *post*, chap. viii. § 2.

117. *Rex* v. *Hensingham, T. T.* 22 *G.* 3. *Cald.* 206.—Two justices removed *B. G.* and her child from *W.* to *H.* The Sessions on appeal, confirmed the order; and, among other facts, stated that *B. G.*, widow, after having been hired for a year to and serving a year with *A. Benn* of *H.*, married *W. G.*, who in his life-time told her that he was born in *Yorkshire*, but that he did not know where his settlement was. She had by *W. G.* her son *W. G.*, the other pauper, lawfully born at *W.* The Sessions were of opinion, that as the place of her husband's settlement was not known, her settlement was in *H.* by a year's service with Mr. *Benn*. —WILSON, to quash the orders, insisted, that it ought to have been proved, that due diligence had been used by the parish of *W.* to discover the settlement of her husband: that at least, after what her husband had related of his birth in *Yorkshire*, some inquiry ought (*b*) to have been made there; and that otherwise there could not correctly be an adjudication that this was the place of her last legal settlement.—LORD MANSFIELD: Nobody has found a later. "Born in *Yorkshire*," affords as much of certainty as "born in *England*." It is not a description sufficiently precise to furnish a clue for investigation. If the husband's settlement does not appear, it is the same thing as if he had none, and then this is the woman's settlement: the party who alleges that she has another settlement must show where it is. The Sessions have done right. A case was made to charge the parish of *H.*, and they have not discharged themselves; which if they could, upon proof of the first settlement, they ought to have done.—

(*b*) Vide Rex *v.* Ryton, *ante*, pl. 114. Rex *v.* Woodsford, *post*, pl. 118. and Rex *v.* Hedsor, *post*, pl. 119.

WILLES, ASHHURST, and BULLER Js., concurring, rule discharged, and both orders affirmed.

118. *Rex* v. *Woodsford*, *H. T.* 23 *G.* 3. *Cald.* 236. — Two justices removed *M. P.*, widow, and her four children from *Woodsford* to *W.*; the Sessions adjudged the settlement to be at *Woodsford*. On hearing the appeal, the appellants produced a copy of the register of the birth of *M. S.* in *A.*; and the pauper, *M. P.*, swore, that *M. S.* was her maiden name. The respondents objected, that this was not sufficient; but that the birth of the pauper's husband, *R. P.*, or some other settlement of his, ought to have been shown; and farther, that to identify the said *M. S.*, it was necessary for the appellants to prove the marriage of the said *M. S.* with the said *R. P.*; but the Sessions adjudged, that the proof of the birth of *M. S.* was sufficient; and that the *onus probandi* of the marriage lay upon the respondents.—PER CURIAM: It may be, the husband had no settlement; and if he had, till discovered, her own would in the mean time remain. You were not surprised; but could not or would not answer it. It is enough in the first instance. The Sessions have done right.

But on the removal of a *widow*, it is enough in the first instance to prove her maiden settlement.

119. *Rex* v. *Hedsor*, *M. T.* 24 *G.* 3. *Cald.* 371. — Two justices removed *E. W.*, wife of *J. W.*, and their three children from *U.* to *H.*, and the Sessions confirmed the order. On an appeal the appellants proved, by the testimony of *E. W.*, that she was born at *O.* The respondents then proved, by the testimony of the said *E. W.*, that she was the wife of *J. W.*; but no proof whatsoever was given by them of the husband's settlement. —WILSON and MORGAN showed cause in support of these orders; and contended, that the appellants had made no case, a married woman having no settlement of her own; that the pauper being such, her settlement is her husband's settlement; and that the adjudication that she is settled in *H.* is consequently in effect an adjudication that *H.* was the place of her husband's settlement; that, in the case of *Rex* v. *Higher Walton* (*a*), where, upon the removal of *a wife* to the place of her last legal settlement, it was objected that it did not appear whether this settlement was in *her own* right or in that of her *husband*, the Court said, that "she *could not* be "*settled* at any other place than where her husband was settled:" that if the effect of the order is *primâ facie* to fix the place of the husband's settlement, this presumption cannot be done away merely by showing the place of the wife's maiden settlement; it can only be done by showing a settlement of the husband in another place: that it was immaterial upon the order of the proceeding, that no proof had been made on the part of the respondents: that they need not prove any thing: that every thing they rely upon must be presumed, till the contrary is shown; as it was incumbent upon the appellants, who begin, to impeach the judgment. —BEARCROFT, in support of the rule to quash these orders, insisted, that the Court would consider the facts stated, and not the practice of the Sessions in making one side or the other begin. —LORD MANSFIELD: There is nothing at all in this case. The Sessions have found the settlement of the wife, and it did not appear that the husband had any.—BULLER J. The case cited by Mr. *Wilson* is not applicable: no fact is found there (*a*), not a word of any settlement of the wife's; and the presumption is in favour of the order. But here the fact is contrary to the order.

So upon the removal of *a wife*, it is enough to prove maiden settlement.

(*a*) *Ante*, pl. 112.

(*a*) It was a motion to quash the order for want of sufficient certainty

upon the face of it.

— WILLES J. concurring, the rule was made absolute, and both orders quashed.

If husband and wife be certificated, and the wife be removed to the certifying parish, by an order which is unappealed from, this concludes the husband's settlement to be in the same parish, though she was not removed as *his wife*, and he had gained a settlement in the parish to which the certificate was given.

120. *Rex* v. *Towcester*, *H. T.* 25 *G.* 3. EDITOR'S *MSS.* — *R. C.* and *M.* his wife, on the 17th *September* 1773, came with a certificate from *H.*, where they were legally settled, to reside in the parish of *T.* During their residence at *T.* under the certificate they had four children born, and *R. C.* gained a settlement in *T.* by renting a tenement of 10*l.* a year. Afterwards, and in the absence of the husband, the wife and her four children, having become chargeable, were, on the 31st *March* 1784, removed by an order of two justices, which was unappealed against, from *T.* to *H.*, as to the place of *her* last legal settlement. Subsequent to this removal, the husband went to *H.* to his family, and, on the 27th *May* 1784, was removed from them by an order of two justices to *T.* On an appeal to the Sessions against this last order, they admitted collateral evidence to prove that the said *R.* and *M.* were *husband* and *wife*. The question was, Whether the settlement of the husband was concluded by the first order of removal of his wife and children, which only stated her *name*, but did not style her *the wife* of any one? The Sessions thought not; and, holding him settled at a different place from his wife, they confirmed the order of the 27th *May* 1784, and stated the case as above mentioned. — On these orders being removed into the King's Bench, Mr. DAYREL obtained a rule to show cause why they should not be quashed on the authority of the case of *Rex* v. *Hinxworth* (*a*); and no counsel appearing to show cause, the rule was made absolute, and both the orders were quashed.

(*a*) *Ante*, pl. 115.

If a *feme covert* be removed by an order of two justices from A to B, describing her as "widow," and there be no appeal against it, it is conclusive not only as to her settlement but as to that of her husband also.

121. *Rex* v. *Rudgeley*, *T. T.* 40 *G.* 3. 8 *T. R.* 620. — By a certificate dated the 4th of *March* 1727, directed to the churchwardens and overseers of *A.*, the then officers of the parish of *R.* acknowledged *J. S.*, his wife, and his son *E. S.*, (the pauper,) then about three months old, to be inhabitants legally settled in the parish of *R.* About forty years ago the pauper *E. S.* was married in *Gloucester* to *E. G.*; they parted in the year 1787, and since that time never saw or heard of each other until after the removal next mentioned. By the following order of two magistrates the said *E.* was removed on the 9th of *November* 1799 to *A.* [Here was set forth an order signed by two magistrates for removing her by the name and description of "*Elizabeth Smith*, widow," from the parish of *St. G.* to *A.*] There was no appeal against the last-mentioned order. — GROSE J. The question is, Whether or not the former order, by which the pauper's wife was removed to *A.*, and against which there was no appeal, be conclusive as to the settlement of the persons removed by the present order? Nothing is more convenient in every part of the law than certainty, and especially in cases of this kind when it is considered that those who are to sit in judgment at the Sessions are, generally speaking, not members of our profession; it is therefore of great consequence that we should abide by what has been already decided on settlement cases. The general rule that an order of Sessions unappealed against is conclusive seems to be admitted. The cases alluded to prove it; they also show that the same rule extends to an order removing a married woman. It is said, however, that though this rule was applied in two of the cases cited to a woman *removed as a feme covert*, it ought not to be extended to a case

where the woman removed is not described as a married woman, and that the case of *Rex* v. *The Inhabitants of Towcester* (*a*), where it was so extended, is not to be considered as of any authority, because it was not argued at the bar: but I rather believe that the counsel who were to have argued the case of *Rex* v. *Towcester* thought the point so clearly settled that they had no hopes of inducing the Court to depart from the opinion which they had given in the two prior cases, and therefore they abandoned it. Then if we were to determine in this case that the former order of removal was not conclusive, we should shake the authority of all the decisions on this subject. It was objected by the counsel who argued in support of the order of Sessions that the former order gave no notice to the other parish that the husband's settlement would be litigated under it, because she is only described as "widow" generally, without saying of whom she was the widow. But this imported that she was removed to a parish where her husband had gained a settlement; at least it put that question in issue; therefore it behoved the parish to which the removal was made to inquire how that settlement was gained. This would have been an object of inquiry on an appeal against that order. But as that parish did not then litigate the question, we are bound, according to all the authorities, to determine that the former order of removal is conclusive, and that not as to her only, but as to the husband likewise. The consequence is, that this rule must be made absolute.—LAWRENCE J. The counsel in support of the order of Sessions admitted that the case of *Rex* v. *Hinckworth* (*b*) must be considered as an authority as far as it professes to decide, but they attempted to distinguish that case from the present, by saying that the order in that case conveyed a notice to the parish to which the removal was made that it involved in it the husband's settlement, and they seem to admit that if a similar notice had been conveyed in the former order in this case it would have been sufficient. Now I think that this order did upon the face of it point out that the husband's settlement might come in question under it; for the woman was removed *as a widow*, in which case the presumption is that she was removed to the place where her husband was settled. Therefore that parish either did then inquire as to the husband's settlement, and were satisfied that there was no ground for an appeal, or they made no inquiry on the subject, but acquiesced under the order of removal: but in either case, I think, on the authority of the former cases, that the former order is conclusive as to both these parties.—LE BLANC J. I am also of opinion that the former order of removal is conclusive as to the settlement of both the persons now removed. The general rule that an order of removal unappealed from is conclusive is admitted; it is likewise admitted that an order of removal of a wife, as such, is conclusive not only as to her but as to her husband. Then the question here is, Whether or not the removal of a wife by a wrong addition makes any difference in this respect? And with regard to that point, the cases of *Rex* v. *Silchester* and *Rex* v. *St. Mary, Lambeth*, show that an order of removal unappealed from is conclusive, though the party be removed by a wrong addition; for in both those cases the woman was removed as the wife, though, in fact, she was not the wife, and yet it was holden that the parties were precluded by the *orders from disputing the* settlements again

(*a*) *Ante*, pl. 120.

(*b*) *Ante*, pl. 115.

upon subsequent removals. The result of all the cases on the subject seems to be this; an order of removal unappealed against is conclusive; an order of removal of a woman, though not as wife, is conclusive as to the settlement of the husband as well as the wife; and the circumstances of the party being removed under a wrong description does not take the case out of the general rule. —PER CURIAM: Both orders quashed.

An order of justices removing "M. F. *wife of* P. F. a Scotchman, who never gained a settlement in England," and their children to the place of *her* last legal settlement; which order was stated on the face of it to be made on *examination of the husband,* and *with the consent of him and his wife;* was holden good.

122. *Rex* v. *Eltham* (*a*), *E. T.* 44 *G.* 3. 5 *East*, 113.—An order of two justices stated that complaint had been made to them by the churchwardens, &c. of the poor of the parish of *St. G.*, "that "*Mary Finn, wife of P. F., who is a* Scotchman, *and who never* "*gained a settlement in* England, with their three children (naming "the infants), &c. had lately come to inhabit in the said parish; "not having gained a legal settlement there, &c. (in the usual "form), and that *upon examination of P. F.*, and of the said *Mary* "*his wife*, on oath, &c. and upon other circumstances, the said "justices adjudged that the parish of *E.* was the last legal settle- "ment *of the said* Mary *and her three children*," and directed the removal of the said *Mary* and her children accordingly to *Eltham*, "*by the mutual consent of the said* P. *and* Mary *his wife*." Against this order there was an appeal, which was afterwards dismissed by the Sessions, without stating any case upon it. And both these orders having been removed into this Court by *certiorari*, objection was taken by E. MORRIS, that the wife was removed by the order of the justices from her husband, who was still living, and probably in the very parish from whence she and the children were removed, and whose assent to their separation, even if it could be presumed in favour of the order, was invalid. *Marshall* v. *Rutton*. (*b*) In *St. Michael* v. *Nunny* (*c*), the Court said, that if the husband were in the parish from whence the wife was sent, it would vitiate the order. Now that fact is to be collected in this case; for he is stated to have been examined before the magistrates, and to have given his consent to the removal.—LAWRENCE J. How does it appear that the husband was living in the parish of *St. George the Martyr*? He might have been before the magistrates without residing there. The order only states that the wife and children were come to inhabit in that parish.—LORD ELLENBOROUGH C. J. What doubt is there in the case? A *Scotchman*, who has no settlement of his own, and is desirous to give his wife and children the benefit of hers, being unable to maintain them, consents that she should be sent to her parish, to which she herself is willing to go. Why should he not consent? This is nothing like the contract of separation declared to be illegal in *Marshall* v. *Rutton*. Servants, and other persons of that description, members of the same family, who are to subsist by their labour, must frequently separate for that purpose. Here there is neither a private nor a public injury, and there is no law against it.—PER CURIAM: Rule discharged, and both orders affirmed.

(*b*) 8 T.R. 545.

(*c*) *Ante*, pl. 110.

By stat. 59 G. 3. c. 12. § 33. the wife and eight unemancipated children of a *Scotchman*, who has not *acquired any*

123. *Rex* v. *Leeds*, *E. T.* 2 *G.* 4. 4 *B. & A.* 498.—Two justices by their order removed *Hannah*, the wife of *T. Robinson*, and her children, from the township of *L.* to the township of *A.* The Sessions upon appeal discharged the order, subject to the opinion of this Court upon the following case: *T. Robinson*, the husband of *Hannah Robinson*, was a *Scotchman*, residing at *L.* with his

(*a*) But see Rex v. Leeds, *post*, pl. 123.

family, and had not acquired any settlement in *England*. Not being able to maintain his wife and children, they were obliged to apply for relief to the township of *L.*, and were actually chargeable to that township at the time of granting the order of removal. Under these circumstances he consented that his wife and children should be removed to *A.*, which was the place of his wife's maiden settlement. It was objected by the counsel for the appellants, that by the statute 59 *G.* 3. *c.* 12. *s.* 33. the wife and family (the children not having gained any settlement in their own right), could not be sent by an order of removal to her maiden settlement, but ought to be sent by a pass under that act, along with the husband, to *Scotland*. The Sessions were of that opinion, and accordingly discharged the order of removal.—ABBOTT C. J. This question arises out of the compulsory power formerly vested in justices of peace, of removing a wife from her husband by consent; and it is one, and that not the smallest of the evils attendant on the poor laws, that cases should have arisen under them, in which this Court has held that such a removal, amounting to a temporary divorce, might lawfully be made. It is to be observed, however, that in *Rex* v. *Eltham* (*a*) there was the consent of both husband and wife to the separation. I am very glad that we are relieved by this act of parliament from the necessity of considering those cases. I think it is impossible to read the words of the 33d clause without seeing that the magistrates have now the power, in cases like the present, of sending the husband, together with his wife and family, by a pass to *Scotland*; and, having this power, I am of opinion that they cannot now remove the wife and family to her maiden settlement, so as to separate her from her husband. I think, therefore, that the order of Sessions was right, and ought to be confirmed.—BAYLEY J. I am of the same opinion. It is against public policy and good morals to permit the separation of husband and wife, even with their consent. This question, however, turns on the construction of 59 *G.* 3. *c.* 12. *s.* 33., which enacts, that it shall and may be lawful for the magistrates, and they are thereby required, in certain specified cases, to cause persons born in *Scotland*, &c. to be brought before them. Now these are words of compulsion on the magistrates to institute proceedings in cases like the present. The act then provides, that the justices shall inquire into the settlement of the head of the family and his or her children, in order, as it seems to me, to ascertain whether any of those children have been emancipated. It then enacts, that such justices shall and are thereby empowered to cause such poor person, his *wife*, and such of his children as have not gained a settlement in *England*, to be removed by a pass to *Scotland*. Now it is to be observed, that the wife is thus, for the first time, introduced in the latter part of this clause, which is perfectly silent in the prior part of it, as to any inquiry to be made by the justices respecting her settlement. I think, therefore, that the magistrates have no discretion given to them of removing the wife to her maiden settlement, and thereby of separating her and her family from the husband. If the magistrates remove at all, they must remove the whole family together to *Scotland*, under the provisions of this act of parliament.—HOLROYD J. I am of the same opinion. The words of this clause are imperative on the magistrates, in case they make any order, to remove the *whole family to Scotland*, and not,

settlement in *England*, must, if chargeable, be sent by a pass along with the husband to *Scotland*, and cannot be removed to the maiden settlement of the wife.

(*a*) *Ante*, pl. 182.

as they have done here, to remove the wife and family to the place of her maiden settlement. By the act, if the husband becomes chargeable by himself or his family, he may be removed; and, it seems to me, that it is altogether immaterial, provided the head of the family be born in *Scotland*, whether the children be born in *England* or not. The only exception is, as to those children who have gained settlements in *England* in their own right. Then, as a power is now given to remove the husband, the wife must be removed with him; for the power of removing her to her maiden settlement was allowed to exist only from the necessity of the case, and must cease with it. It seems to me, that we cannot narrow the construction of the words of this statute, unless, in so doing, we clearly saw that we should further the intention of the legislature. And as I do not think that their intention was to prevent the removal of the whole family together, I am of opinion that the decision of the Sessions was right.—BEST J. If the point decided in *Rex* v. *Eltham* (*a*) were to occur again, I think it would, perhaps, be worth considering whether that decision could be supported. It is, however, not necessary to determine that question now, because I am clearly of opinion, that under the clause of this act of parliament, it is imperative on the magistrates to remove the whole family to *Scotland*. It seems to me, that clearer terms could not have been used. For the act expressly says, "that the magistrates shall, and they are hereby empowered, to remove such "poor person, his wife, and such of his children as have not gained "a settlement, to the place of his birth or last legal settlement." The statute could not, therefore, mean to leave a discretion in the magistrates as to whether they would exercise this power or not. And by adopting this construction, we shall, as it seems to me, further the object of the statute, which was to remove the inconvenience which existed from idle and improvident persons coming to this country, and remaining here irremovable with their wives and families. Any other construction would produce great inconvenience. It is quite clear, that the head of the family may be removed; and if he should be removed, after the separation from his family, the wife and children would, in all probability, remain permanently chargeable.—Order of Sessions confirmed.

(a) *Ante*, pl. 122.

CHAPTER IV.

SETTLEMENT BY RENTING A TENEMENT OF TEN POUNDS A YEAR.

I. *The Statutes.*
II. *The Kind of Tenement.*
III. *The Species of Tenure.*
IV. *The Value of the Tenement.*
V. *The Time for which it must be holden.*
VI. *The Residence necessary.*

I. *The Statutes.*

13 & 14 *Car.* 2. *c.* 12. § 1, 2. 59 *G.* 3. *c.* 50. 6 *G.* 4. *c.* 57.

II. *The Kind of Tenement.*

124. *REX* v. *Stanmore*, *H. T.* 3 *Jac.* 2. *Skin.* 268. — The question was, Whether the TEN POUNDS *per annum* mentioned in the statute 13 & 14 *Car.* 2. *c.* 12. for the settlement of a poor man shall be understood 10*l.* a year of an estate of freehold and inheritance, or 10*l.* a year as a tenant? And it was urged, that it is unreasonable to intend that the act would remove a person from his freehold though under 10*l.* a year; and that the statute ought to be understood of renting 10*l.* a year. And a case was cited to have been so ruled by *North* C. J. at the assizes at *Buckingham*; and HOLLOWAY said, that he had known it to be so adjudged. — But HERBERT C. J. was of another opinion, and took a man who bought a cottage of 20*s.* a year, of which he had the inheritance, to be within the words and meaning of the act, if he be likely to become chargeable to the parish; for that is the thing against which the statute provides; but when a man is not likely to become chargeable to the parish, if he will live in a cottage of 10*s.* *per annum*, or otherwise under his condition, he is not within the meaning of the act. The other justices were silent.

The statute means *renting* an estate of 10*l.* a year, and not *purchasing* a freehold to that value.

125. *Evelyn* v. *Rentcomb*, *H. T.* 10 *Ann. Salk.* 536. — An order was drawn up specially to have the opinion of the Court, whether renting *a water-mill* of 10*l.* a year would make a settlement. — ET PER TOTAM CURIAM: Clearly *a mill* is a tenement, and the renting thereof must gain a settlement within the statute. St. Mary Guildford, 1 Str. 502.

A *water-mill* is a tenement within 13 & 14 Car. 2. c. 12. See also the case of Cranley v.

126. *Kinver* v. *Stone*, *H. T.* 12 *G.* 1. *Str.* 678.—A poor person rented a coney-warren and a cottage upon it at 10*l.* *per annum*. —PER CURIAM: A *mill* has been held to be a tenement within the statute, and why not this? It is his ability to pay 10*l.* *per annum*, that is the foundation of the settlement; and whether he pays it for a house, for habitation, or for a warren which brings him in a profit, is not material.

A *coney-warren* is a tenement, within the 13 & 14 Car. 2. c. 12. S. C. Salk. 68. 2 Sess. Cas. 114.

A prisoner in the Fleet who rents a house of 10*l.* a year within the Rules thereby gains a settlement.
S. C. Str. 924.
2 Bar. K. B. 76.
2 Kely, 240.

127. *St. Margaret's, Westminster*, v. *St. Martin's, Ludgate, H. T.* 5 *G.* 2. EDITOR'S *MSS.* — Two justices removed *E. C.*, a single woman, from the parish of *St. M.* to the parish of *L.* The Sessions quashed the order, and stated the following case: *J. C.*, the father of *E.* the pauper, rented a house in the parish of *St. M.* at 25*l.* a year; lived in it eight years; and paid to the rates of church and poor: this house was situated within the rules of the Fleet prison; and the said *J. C.*, at the time he so rented the said house, was a prisoner in the custody of the warden of the Fleet. The said *E.* was born in the said house during the father's residence therein, under the circumstances before mentioned, and had gained no settlement in her own right. — CORBETT submitted to the Court, that the father gained a settlement in the parish of *St. M.* by renting *a tenement* therein of 10*l.* a year, and that his daughter was entitled to his settlement. — THE COURT were of opinion, that this was a tenement within the 13 & 14 *Car.* 2. *c.* 12., and therefore quashed the order of Sessions, and confirmed the order of the two justices.

A *windmill*, though no *dwelling-place*, is *a tenement* within the act; and will gain the tenant a settlement if he reside in the parish, although he has given security for the payment of the rent.
2 Str. 1077.
1 Sess. Cas. 402.

128. *Rex* v. *Butley*, *T. T.* 10 & 11 *G.* 2. *Burr. S. C.* 107. — *C.* came with A CERTIFICATE from *Butley* to *Benhall*, and some short time afterwards took a lease of a *windmill* in *Benhall* from one *T. G.* for the term of three years, at the yearly rent of 14*l.* About the same time he hired of *T. M.* a cottage and a piece of land in *Benhall* by parole to hold for one year, and so from year to year, so long as it should please both parties, at the yearly rent of 3*l.* *C.* entered upon the *mill*, the *cottage*, and the *land*, and occupied the same for three years under the said lease, and paid all the rent himself; but he had a surety, who engaged for the payment of the rent of the *windmill* during the said three years. After the expiration of the lease, he occupied *the mill* for three years longer under a parole agreement that he should hold the said *mill* at the said annual rent so long as he should continue to pay the same; and for the payment of the rent under this agreement no surety was required. During these last three years *C.* occupied another cottage in *Benhall* of 3*l.* 2*s.* 6*d.* a year, which he rented as a tenant at will. It was insisted, that this could not gain a settlement; for though a *water-cornmill* had been held to be *a tenement* within the act (*a*), yet a *windmill* could not be considered as such, because it had no house or place of residence, as other mills have. — BY THE COURT: It has been endeavoured to distinguish between renting land and renting a mill, because a miller has no stock; but this objection has been often overruled: the words of the act are "*bonâ fide*:" and what can be better evidence thereof than payment of the rent? If a man rent lands or a mill of 10*l.* *per annum* without any house in the parish, he gains no settlement, because he cannot reside thereon without a place of habitation. But here the pauper held a cottage and lands at 3*l.* *per annum*, at the same time that he held the mill at 14*l.* *per annum*; and therefore he gained a good settlement.

(*a*) Vide *ante*, pl. 125.

Land taken for a particular purpose, as that of growing potatoes for a par-

129. *Rex* v. *Shenston* (*a*), *E. T.* 32 *G.* 2. *Burr. S. C.* 474. — The pauper *T.* having gained a settlement at *S.* by a year's hiring and service, afterwards took a house in the parish of *G.*, at 30*s.* a year, which he enjoyed for 15 years; five years before

(*a*) Rex v. Croft, *post*, pl. 189.

his removal he took two acres of land in the parish of *K. B.* for the growing of potatoes, from *Candlemas* to *Michaelmas*, for 9*l.*: and at the same time and from the same person took, in the said parish of *K. B.*, half an acre of land, at 40*s.* for the like term; and paid his rent for all the premises, which were of the value aforesaid. The pauper entered upon and enjoyed the lands during the term; and during the latter part of the time of his enjoying the same, *to wit*, between *Midsummer* and *Michaelmas*, he lodged above 40 days in the parish of *K. B.* where the lands lay, for the convenience of digging up and disposing of the potatoes. It was contended, that this land was hired for a *particular purpose* — for the planting of potatoes where no stock is requisite; and that as the residence in *K. B.* was for the mere purpose of looking after the potatpes, it was not a tenement within the meaning of the act of parliament.—LORD MANSFIELD: This man has *bond fide* taken ground of the yearly value of 12*l.* 10*s.* *if* we are to judge by computing the proportional rent; and in the nature of this *species of culture*, it is a taking of the whole year's profits of the land. In some other cultures besides this, as *woad*, *rape*, &c. it requires only a part of the year to get the crop; and it is stronger where the rent for part of the year only is above 10*l.* than where the 10*l.* is payable for the whole year. — DENNISON, FOSTER, and WILMOT Js. concurred.

ticular portion of the year, is a tenement within 13 & 14 Car. 2. c. 12.

130. *Rex* v. *St. George's Hanover Square*, *T. T.* 11 *G.* 3. *MSS.* — *M.*, the pauper, about 12 years before his removal, hired of Mr. *J. R.* the first and second floors unfurnished of a house of the value of 40*l.* a year, in the parish of *St. J.*, the pauper furnished this part of the house, and held the same entirely to himself, and inhabited therein seven years, and paid for the same 10*l.* a year, clear of all deductions, to the landlord *J. R.* during all that time: there was only one door, and one staircase, which were used in common by the pauper and other persons who resided in the house: and the order of Sessions vacating the order of two justices, by which the pauper was removed from *St. G.* to *St. J.*, was quashed.

A first and second floor unfurnished, at the rent of 10*l.* a year is *a tenement*; although the apartments are not distinct from the house. See Burr. S. C. 692.

131. *Rex* v. *St. Giles's in the Fields*, *H. T.* 15 *G.* 3. *Burr. S. C.* 798. — *E. O.* was married to *T. O.* about eight years previous to the removal. The father of *T. O.* was legally settled in the parish of *St. A.* *T. O.* had not done any act to gain a settlement in his own right, except that about 12 months previous to their said marriage, he took a shop, at 15*l.* 15*s.* a year, in *Piccadilly*, in the parish of *St. J.*, being part of the house of one Mrs. *L.*: the shop, at the time of his taking it had no door but that which opened immediately into the street, nor any communication with the other part of the house: he likewise agreed for the use of the water and necessary (which were within the house); to which he had access, in common with the other lodgers, by another door belonging to the house, which opened into a court leading from *Piccadilly* to *Jermyn Street*: he also agreed, at the time of taking the shop, that his sister, who was part of his family, should lodge with Mrs. *L.*'s maid in the garret of the house; for which he was to pay an additional rent over and above the 15*l.* 15*s.* In less than a month after he had taken possession of the shop, finding it inconvenient to go out at one door and in the other, he applied to Mrs. *L.* for leave to open a way through the partition which sepa-

A shop occupied separately from the house to which it belongs is a tenement.

rated the shop from the staircase: she consented thereto; and he opened the same accordingly: he rented, and constantly lay and resided in the shop, and publicly carried on his trade as a shoemaker in the same (having such communication to the water, the necessary, and the staircase by which his sister went to her lodging in the garret, as aforesaid), until his marriage: he continued in the house, under the same circumstances, for about two years afterwards: and Mrs. *L.* rented and resided in the said house during all the time of the said *T. O.*'s residence as aforesaid, and paid 30*l. per annum* and all parochial taxes for the same. — THE COURT were of opinion, that this was, undoubtedly, a tenement of the value of 10*l.* a year: and that *T. O.* was, consequently, settled in the parish of *St. J.*

A furnished room, with fire found, rented by the week for a particular purpose, and the landlord to have the use of it at other times, is *a tenement* within the statute.

132. *Rex* v. *Whitechapel*, *H. T.* 26 *G.* 3. EDITOR'*s MSS.* — *Anne Allam*, widow, and her children were removed from *Whitechapel* to *Westham*. — THE SESSIONS quashed the order, and stated, That the pauper's late husband, *Peter Allam*, about four years ago, hired a house in *Westham* of the yearly value of 8*l.* 8*s.*, and resided therein till his death, which happened 12th *January* 1785: that about 12th *October* 1784 he hired a room at the sign of *The Bird in Hand* victualling-house in *Westham*, at 3*s.* a week, to be made use of, and which was used as an office or place for the justices to meet and transact the parish and other public business; he, *Peter Allam*, being clerk to the said justices. The room was furnished with chairs and tables, and the landlord was to find firing; and it was agreed that the landlord was to have the use of the room on the assembly-nights, being once a fortnight, and at other times when *Allam* did not want it. *Allam* had the key, and might have locked the door if he would, but did not do it above once or twice, and used to leave the key in the door. The rent of 3*s.* a week was paid by *Allam* out of his own monies and fees, and no part thereof was paid by the justices; nor had they any concern with the room, other than merely meeting therein for the purpose aforesaid. — MR. SILVESTER contended that the pauper's husband was only servant to the justices; that this room was not an entire tenement; that the 3*s.* a week included fire, which might amount to nearly the whole; and that the landlord also found furniture. — BULLER J. There is nothing found as to the value of the fire and the furniture; and all we can say is, that he has rented a tenement of 10*l.* a year. — Order quashed.

A "*land-sale colliery*" is a tenement, by the renting of which a person may gain a settlement.

See this case stated more at large, Cald. 452.

133. *Rex* v. *North Bedburn*, *E. T.* 24 *G.* 3. EDITOR'*s MSS.* — The pauper had a lease of "A LAND SALE COLLIERY," at 12*l.* 10*s.* a year, for a certain season of the year; and also rented, by parole agreement, another land sale colliery, at 24*l.* a year. About three years previous to his removal, and subsequent to the expiration of the term, he applied to the lessor for a sight of the lease, but which the lessor refused to show him, and soon afterwards died. The lease not being produced, the Sessions admitted parole evidence of its contents; and one objection was, that such evidence was improperly received: but a second point was, that it had appeared that this demise was not only for a tenement, but also for a great quantity of personal chattels for the purpose of working the coal mine; and that, on the case as it stood stated by the *Sessions*, a "LAND SALE COLLIERY," being a term well known in

the coal countries as comprehending not the mine only, but the stock of horses, gins, ropes, and other things necessary for working, and therefore that so considerable a part of the rent must have been for this stock, that the *tenement* itself would not be worth 10*l.* a year. — THE COURT held, that the Sessions had done right to receive parole evidence of the contents of the lease; and they confirmed the orders which removed the pauper to *North Bedburn*, in which parish he had rented these land sale collieries.

A *cattle-gate* is a *tenement* within 13 & 14 Car. 2. c. 12. for the purpose of gaining a settlement.

134. *Rex* v. *Whixley* (*a*), *H. T.* 26 *G.* 3. 1 *T. R.* 137. — *T. P.* the pauper served an apprenticeship to *R. P.* in the township of *Whixley*, the said *R.* then residing there under a certificate from the township of *B.*: in the two last years of the pauper's apprenticeship, his master *R. P.* rented a dwelling-house, with a garden, orchard, yard, stable, mistal, and shop, of the value of 1*l.* 11*s.* 6*d. per annum*; and also a meadow, containing near seven acres, at the yearly rent of 7*l.* 10*s.*; and also at the same time, namely, for the last two years of the pauper's apprenticeship, occupied two cattle-gates of the value of 1*l.* 4*s.* a year, in a stinted pasture, on consideration that the said *R. P.*, being a carpenter, should keep in repair three common highway-gates which the persons having a right to the cattle-gates were bound to sustain. — The question for the opinion of the Court was, Whether the said cattle-gates were a *tenement* within the statute? — LORD MANSFIELD C. J. These cattle-gates pass by lease and release, and cannot be devised but according to the statute of frauds. They are, therefore, to be considered as a tenement within the statute.

A lease of the fishery of a pond, with the spear-sedge, flags, and rushes in and about the same, is such a constructive demise of *the soil*, that it is a sufficient *tenement* within the 13 & 14 Car. 2. c. 2.

135. *Rex* v. *Old Alresford*, *T. T.* 26 *G.* 3. 1 *T. R.* 358. — The pauper *J. D.* and his father resided in *O. A.*, under a certificate from *C.* The father, after he went into *O. A.*, rented a house and piece of land therein at 3*l.* a year, and occupied the same several years: during two years he took and *held under a parole agreement* from Mr. *Edwards* the following premises in *O. A.*, viz. the *fishery of a pond*, containing 60 acres, called *A. pond*, *with the grates*, &c. and also *all the spear-sedge*, *flags*, *and rushes* growing in and about the said pond; and *the right of cutting the sedge* growing on a piece of rough meadow or sedgy ground, containing seven acres, not being part of the said pond, but being distinct therefrom, and held under a different right; and agreed to pay Mr. *Edwards* 10*l.* a year for the said premises, and to supply Mr. *Edwards*'s house with fish: during the time he held the said premises, he rented and *held under a parole demise the fishery of the causeway river in* New Alresford, with the grates to a small fish house, and paid 3*l.* a year for the same. The said house and piece of land first mentioned, and the right of cutting sedge, &c. on the said seven acres of rough meadow ground, and the said fishery, &c. last mentionnd, were together of the annual value of 10*l.*, without taking the said pond or any thing thereto belonging into the account. — LORD MANSFIELD C. J. Upon this state of the case, the Court will consider that the fishery and the soil passed together; therefore the pauper took a tenement within the statute. — ASHHURST J. There is no doubt but that a fishery is a tenement. Trespass will lie for an injury to it; and it may be recovered in ejectment. — BULLER J. The Court go upon this

(*a*) *See Rex v. Stoke-upon-Trent, post*, pl. 149.

ground, that the Sessions have no occasion to go into the title of the lessor at all: the fact of letting a fishery is sufficient, and we must presume that the soil passed along with it; though I am by no means ready to allow, that if it had been any other kind of fishery it would not have given a settlement.

Taking the hay-grass and after-math of a meadow for 10 months at the annual value of 10*l.* is taking a *tenement*.

136. *Rex* v. *Stoke* (*a*), *E. T.* 28 *G.* 3. 2 *T. R.* 451. — The pauper rented a house and land of the yearly value of 8*l.* 12*s.* 6*d.* in the parish of *B.*, in which he then resided; and for 10 months of the same time he took the hay grass and after-math of a meadow in the same parish for 2*l.* 5*s.* 6*d.* He paid no taxes, but he fenced the meadow and spread the hillocks himself. — ASHHURST J. It is clear, from the stating of the case, that the land was intended to pass: it states, that "for 10 months the pauper took the hay-"grass and after-math of the meadow." Now why should he have taken it for 10 months if the soil was not intended to be conveyed? There could be no other profits of this ground but the hay-grass and after-math; and if a man grant all the profits of the ground, he grants the land itself. — BULLER J. This is like the case put in *Co. Lit.* where *pastura* carries the land itself. The pauper was to have the hay and after-math, which was all the produce of the soil. This is not like taking hay-grass after severance; for that is only a chattel. But here the contract was, that the pauper should take all the grass which should grow; he was to cut it, and make it into hay himself; and after that he was to have every thing which grew on the land for 10 months. — GROSE J. of the same opinion.

Renting a *dairy* will gain a settlement; so will *a rabbit-warren* though the party taking it have no interest in the soil, except that of entering on the warren to kill rabbits.

137. *Rex* v. *Piddletrenthide* (*b*), *T. T.* 30 *G.* 3. 3 *T. R.* 772. — For two or three years, while the pauper lived in the parish of *C. H.*, he rented in that parish a dairy of 90 cows, some at 5*l.* 10*s.* and others at 5*l.* a cow, with liberty to cut furze on *G. Warren*, and on other parts of the farm, for the use of the dairy only; and a warren to kill rabbits for his profit, called *G. Warren*, with a small house on it to keep nets, in the same parish, of the same man, at 30*l.* *per annum*; and also another rabbit-warren in the neighbourhood, called *H. Warren*, for the same purpose, at 15*l.* *per annum*. The cows were to feed in particular grounds at particular seasons of the year, as is usual in the letting of dairies. The pauper and his man sometimes slept in the house in *G. Warren*. The pauper had no right in the soil of either of the said warrens, except that of entering upon and killing rabbits there; the persons of whom he rented the warrens constantly depasturing the same, and ploughing some part thereof. — LORD KENYON C. J. If we were now called upon for the first time to make a decision on this statute, perhaps I should have some difficulty on the subject; but the Courts have put a liberal construction on it. I cannot quite agree with the determination of *Rex* v. *Lockerley*, because, after it had been decided in so many cases, that an incorporeal hereditament would give a settlement, I should have thought that that case would have received a different determination. (*c*) But without considering that case, I think

(*a*) See Rex *v.* Stoke-upon-Trent, *post*, pl. 149; Rex *v.* All Saints, Cambridge, *post*, pl. 156.

(*b*) See Rex *v.* Stoke-upon-Trent, *post*, pl. 149; Rex *v.* Minster, *post*, pl. 182.

(*c*) The substance of the case was that the pauper took a dairy of 16 cows, with a dwelling-house, and feeding for the said cows on 21 acres of clover-ground, and 13 acres of meadow land, with the after-leaze of a mead, the run

that the pauper took a tenement in *C. H.* both by renting the dairy and the warren. Lord *Coke* says, that *prima tonsura* is a tenement; then the dairy was a tenement; the other taking was also sufficient; for it was, if I may use the expression, a pernancy of the profits of the land by the mouths of the rabbits. A free warren is the subject of a family settlement; a *præcipe* will lie for it; and the renting of it is sufficient to give a settlement. If this case had been precisely similar to that of *Rex* v. *Lockerley*, perhaps I should have hesitated before I agreed to overturn that decision; but as this is distinguishable from that case (though the distinction is nice), I think that the pauper gained a settlement in *C. H.* — ASHHURST J. It seems difficult to reconcile all the cases on this subject. If the case of *Rex* v. *Lockerley* be law, I do no see how this pauper can have gained a settlement in *C. H.*: but as there are authorities both ways, I am inclined to think that a settlement was gained in *C. H.*; the *criterion* by which the question is to be decided being the ability of the person taking the tenement. — BULLER J. In all doubtful cases one leading ground is the ability of the pauper to pay the 10*l. per annum*. But, on the facts here stated, I think this person rented a tenement within the construction of the statute of *Charles*. I cannot agree with the determination of *Rex* v. *Lockerley*: that was considered as a personal contract; but all contracts are, in some respects, personal. The question in such cases really ought to be, Whether or not it be a *contract to receive profits out of land*? The present I consider as such; and so was that in *Rex* v. *Lockerley*: I am, therefore, of opinion, that the conclusion drawn in that case was wrong. As to the other point, I do not consider this merely as a privilege to kill rabbits when the pauper could find them, and that the landlord might take them all if he chose it; but the warren was to be kept in the same state as it was when it was let, otherwise the contract between the landlord and the tenant would be destroyed. In that respect, then, the pauper had an interest in the land: besides he took a house with the warren. — GROSE J. It is impossible to reconcile all the cases on the subject; and I do not understand the ground on which that of *Rex* v. *Lockerley* was decided. In these cases I think that if the pauper has credit to rent 10*l. per annum*, he gains a settlement. The case of *Kinver* v. *Stone* (*a*) decides the present.

(*a*) *Ante*, pl. 126.

138. *Rex* v. *Brampton*, *T. T.* 31 *G.* 3. 4 *T. R.* 348. — The pauper, *T. C.*, rented certain premises in *B.*, of the yearly value

Renting the *fogs* and *after-grass* of mea-

of the yard belonging to the messuage, the washes of the farm for feeding of pigs, and the run of one horse with the said cows for one year. He was also to have all the scare wheat from the corn growing on the fence. He was to provide five tons of hay for the cattle when wanted; to cause 10 acres of clover-ground, and 13 acres of meadow to be laid up at Candlemas, and to make other provision for supporting the said cattle: and the Court held, that this was not *a tenement* within the statute, for that the "pasture of the ground "generally was not let, but only the "feeding of 16 cows." But in the case *of Rex* v. Tolpuddle, *post*, pl. 139., this case was expressly denied to be law; and it should seem that by this determination, the case of Rex *v.* Minchinhampton, Str. 142. 2 Sess. Cas. 92. and Rex *v.* Lindwood, 19 G. 2. cannot now be supported. In the first, the pauper took "the *pasture eatage* of a piece of "ground," and in the second, "the pau-"per rented land to the amount of 67*l.* "a year, and agisted three cows to pas-"ture from May-day till Martinmas, by "agreement for three years successively, "for which he was to pay 3*l.* 10*s.*" and it was in both cases determined, that these were not *tenements*; and see Rex *v.* Stoke-upon-Trent, *post*, pl. 149.

dow-land to the yearly value of 10*l.* is a tenement.

of 9*l.*; and during part of the time took the fogs, or after-grass, of two fields, the one for 30*s.* and the other for 1*l.* 1*s.* a year; the whole of which together he occupied for more than 40 days. — THE COURT were clearly of opinion that the pauper had gained a settlement in *B.*; and that this could not be distinguished from the case of *Rex* v. *Stoke* (*a*): and they added, that taking land for a particular purpose, such as that of setting potatoes (*b*), was sufficient to confer a settlement. (*c*)

(*a*) *Ante*, pl. 136.

Renting 20 cows at 3*l.* 10*s.* a year each, to be fed in certain grounds belonging to the owner, exclusively of any other cattle, is a *tenement*.

139. *Rex* v. *Tolpuddle* (*d*), *E. T.* 32 *G.* 3. 4 *T. R.* 671. — *J. C.* was the tenant and occupier of a certain farm in the parish of *T.*, part of the stock of which farm consisted of cows, which, according to the usual course of husbandry in that county, had been constantly let to some dairyman. The pauper rented, under a verbal agreement, those cows of *C.*, being 20 in number, at the rate of 3*l.* 10*s.* a cow *per annum*: it was also agreed between the parties (as is usual in such contracts in the county of *Dorset*) that the owner of the cows should feed and support them; and for the purpose of feeding and supporting them in the best manner, that such cows should depasture in certain lands called the *Cow Leaze Grounds* from *May-day* to the 18th of *September*; and after that time in certain meadow grounds which are kept for that purpose, from the time the same are mowed; both which grounds were part of the said farm, and then in the occupation of *C.*; and when the pasture of the meadow grounds was consumed, that the cows should be kept by *C.* in some other of the farm-grounds with his other cattle, or be foddered in the farm-yard with hay by him. The land, called the *Cow Leaze*, was to be laid up by *C.* at *Lady-day*, and not fed upon by any cattle whatsoever until *May-day*. *C.* was not to feed any other cattle either in the *Cow Leaze* or meadow grounds whilst the same were fed by the cows so rented by the pauper: but the hay of the meadow grounds was cut and taken by *C.* and the *Cow Leaze* ground was fed by him after the cows had quitted such grounds. In case any cow did not calve on or before *May-day*, or if any of them afterwards died, or become barren, an allowance was to be made to the pauper; and in case of sickness amongst the cattle, *C.* was (as is usual in such cases) to defray all the expences. The pauper was not bound to repair any fence in any ground in which the cows were fed. It was further also agreed, that the pauper should have a dwelling-house on the farm, a right of feeding a mare on the farm, keeping his pigs in the yard, and of cutting fuel for the use of the dairy: but he had no other right whatsoever. The said contract continued in force for the space of five years; during the whole of which time the pauper resided in the said house in the parish of *T.* The above are the usual and customary terms in such contracts in the county of *Dorset*; it is the common practice for tenants of farms to let cows upon these farms: and such letting is called a letting of a dairy. — LORD KENYON C. J. It has been argued, that if we decide this to be a tenement, we shall depart from the words of the statute: but in this case the pauper took a tenement, emphatically a tenement. Any thing is a tenement which is a profit out of land. In order to take a tenement, it is not necessary that the party should have the fee-simple or

(*b*) Rex *v.* Shenston, *ante*, pl. 129.
(*c*) *Vide* Rex *v.* Piddletrenthide, *post*, pl. 149. Rex *v.* Minster, *post*, *ante*, *pl. 137.*
(*d*) See Rex *v.* Stoke-upon-Trent, , pl. 182.

fee-tail; any minute interest in land is parcel of a tenement; such minute interest indeed cannot be entailed, but all the parcels, when consolidated together, may. A beast-gate has been held to be a tenement; and yet that is not the whole land, but the profits of the land to a certain amount. So here the profits of these lands are to be taken exclusively by the cows which the pauper rented. If the cattle had been his own, and he had rented the feeding of them, that would have been unquestionably a tenement; like the taking of the pasture, the hay and after-math: and I think that these cows were the pauper's for a certain period; they were not so far his own that he could have sold them, but they were his that he might use them under the contract for a limited time. And this was not the less a taking of a tenement, because the pauper could only enjoy the land in a particular mode; for in many farms the tenant stipulates that he will not depasture sheep or horses on particular grounds. I do not see, therefore, why this is not, strictly speaking, a tenement; for the pauper had, for a certain part of the year, the exclusive right to the pasturage of these grounds, to be taken by the mouths of the cattle. — ASHHURST J. The question here is, Whether it may not fairly be said, that this pauper rented a tenement of the annual value of 10*l.* in *T.*? In the first place, he had the separate possession of a house; in the next, he rented, not merely the milk of the cows, but the cows themselves, and the land under certain qualifications; for he had a right in certain closes, even to the exclusion of the farmer himself. The cows were not depastured where the lessor chose, but in particular fields; and during a certain part of the year no other cattle were to be fed in those grounds. During that time, therefore, the pauper had a separate pernancy of the profits of those fields, which is equal to a demise of the land itself. And though this contract did not amount to an annual demise of the land, yet during a part of the year the pauper had the separate pernancy of the profits; and it is not necessary under this statute that the party should have the tenement for the whole year. — BULLER J. The first question is, Whether this case has not been already decided? I think that it has in *Rex* v. *Piddletrenthide* (*a*); and the arguments pressed upon us about adhering to decided cases, ought to weigh with us in supporting that case. In that case there were two points, upon each of which the Court gave a distinct opinion: in determining one of them it became necessary to take into consideration the case of *Rex* v. *Lockerley* (*b*), which we all thought was wrongly decided. But it has now been argued, that the case of *Rex* v. *Piddletrenthide* is no authority for the present, because it was decided on the other ground, namely, the taking of the rabbit-warren, and that what was said by the Court in that case relative to the dairy was extrajudicial: perhaps if a question were to arise hereafter on the other point, the taking of the warren, the same argument would be applied in that case; and it would be contended, that *Rex* v. *Piddletrenthide* was decided on the dairy, and not on the rabbit-warren; and thus the case, which we consider to have been rightly determined on two grounds, would be frittered away, and would be no authority upon either. But I think that that is not extrajudicial which is made a *point in the case*, and argued upon

(*a*) *Ante*, pl. 137.

(*b*) *Ante*, p. 86. n.

at the bar. The case of *Rex* v. *Piddletrenthide*, therefore, I consider as a decided authority on this very point. Then it was contended, that the great criterion is the ability of the pauper, as marked out by the statute. Now this pauper had the ability to rent 70*l. per annum*, and the question is, Whether that did not gain him a settlement? Against it it is said, that he had no interest in land; that the particular fields were not the object of his contract; that he merely rented the cows; and that the whole was a personal contract; but I think that he had an interest in land, and that unless he could have had all the profits of the meadow for a certain part of the year, he would not have taken the cows. Another argument was, that because the pauper had not an interest which could be entailed, it was not sufficient to confer on him a settlement. But whether a thing may or may not be entailed, depends upon the *subject matter*, and not upon the *interest* which the party has in the subject. Here the interest which the pauper had could not be entailed on account of the imbecility of his estate. But supposing his interest, which was only temporary, had been perpetual; suppose *A.* had granted to him and his heirs the right of depasturing twenty cows for six months in every year, I think that might be entailed. But this case goes still farther; because by the very terms of the contract no other cattle, not even those of the farmer himself, were to be fed on those particular grounds on which the pauper's cows were to depasture; therefore he had the exclusive possession of those fields during that time. This goes a great way to answer the difficulty stated at the bar; for, as at present advised, it seems to me, that if the pauper had the sole possession, or, which is the same thing, the sole profits, he might have maintained trespass (*a*); but on that point it is not necessary to give a decisive opinion. — GROSE J. I was always surprised at the determination of *Rex* v. *Lockerley*, because the pauper took a dwelling-house as well as the dairy, and the case happened after it had been decided that a windmill and a rabbit-warren severally gave a settlement. The case of *Kinver* and *Stone* (*b*) was the ground of my opinion in *Rex* v. *Piddletrenthide*; for there the Court said, "A mill has been "held to be a tenement, and why not this (a rabbit-warren)? It "is his ability to pay 10*l. per annum*, that is the foundation "of the settlement; and whether he pay it for a house for habit-"ation, or for a warren which brings him in a profit, is not mate-"rial." In *Rex* v. *Piddletrenthide* we were all of opinion, that the case of *Rex* v. *Lockerley* was at least doubtful; and as this cannot be distinguished from it, I have no difficulty in saying that it cannot be supported, as being directly contrary to the construction uniformly put on the statute of *Car.* 2., which has turned on the ability of the pauper. But here the pauper came to live in a dwelling house in *T.*, and took a certain interest in the land, explained in the case to be the pernancy of the profits of the land, to the exclusion of the owner, to the amount of more than 10*l. per annum*; which, I am of opinion, is sufficient to give him a settlement in that parish. — THE COURT held the settlement to be in *T.*

(*a*) Vide Welch v. Hall, Bull. N. P. 85.

(*b*) *Ante*, pl. 126.

140. *Rex* v. *Hammersmith* (*c*), *H. T.* 36 *G.* 3. 8 *T. R.* 450. *notis.* — Two justices removed *M. R.*, widow of *J. R*, and three

(*c*) See Rex v. Stoke-upon-Trent, *post*, pl. 149.

of their children from the hamlet of *H.* to the parish of *C.* The Sessions on appeal quashed the order, and stated the following case for the opinion of this Court: "*J. R.*, the husband of "the pauper, was the son of *T. R.* On the 25th of *September* 1790, *J.* and *T. R.* entered into articles of agreement under seal of that date with one *Richard Barton* the owner "of a corn-mill in *C.*, whereby *T.* and *J. R.* severally covenanted "with *B.* his executors, &c. that they *T.* and *J. R.*, their executors, "&c. should and would, with their horses and carriages at their "own cost and charges, from the said 25th of *September* 1790, to "the 25th of *March* 1795, deliver at the corn-mill belonging to "*B.*, weekly and every week, three loads and a half of wheat at "the least, and at their own costs and charges grind and make "the same into flour, and should pay to *B.* during the said term "for the same, after the rate of 8*s.* for each load in manner "and at the times therein stated during the continuance of "the agreement. *B.* covenanted that *T.* and *J. R.* during the continuance of the articles should have the use and liberty of running and grazing for their horses on a certain meadow therein "described, and also the use and liberty of the stable and cart-"house *gratis* for their horses and cart, and without paying for "the meadow, stable, and cart-house. *T.* and *J. R.* covenanted "that they would weekly and every week during the continuance "of the articles pay *B.* the stipulated sum before mentioned on "the respective days therein set forth. And *B.* covenanted that "he would at the expiration of the articles again take to all and "singular the utensils belonging to the said corn-mill at a fair appraisement, and pay to *T.* and *J. R.* such sum as the same should "be appraised at. *J. R.* afterwards ground corn at the mill for "two or three years; he never resided thereon during the same "time, but in a cottage in the same parish, which he rented at "3*l.* 18*s. per annum.*" — GARROW was to have argued in support of the order of Sessions; and GIBBS *contrà*; but the latter abandoned the case. — THE COURT being clearly of opinion that there was no colour for construing this agreement into the taking of a tenement. — Order of Sessions confirmed.

Renting a right of common in gross of the value of 10*l.* a-year is a tenement within 13 & 14 Car. 2. c. 12.

141. *Rex* v. *Dersingham*, *T. T.* 38 *G.* 3. 7 *T. R.* 671. — "The "pauper in *June* 1795 went to reside at *D.*, in a house which, "with half an acre of land and the going of two head of cattle "on *D. Common*, he hired of one *Pretty*, at the rent of 6*l.*, till the "*Michaelmas* following. He continued to occupy the said house, "land, and common rights till the succeeding *Michaelmas*, viz. "*Michaelmas* 1796, at a rent of 8*l.* a year. About the time he "went to *D.*, viz. *June* 1795, he hired of one *S.* the going of three "other head of cattle upon the same common till the *Candlemas* "following, at the rent of 1*l.* 11*s.* 6*d.*; and of one *C.* the going of "one other head of cattle on the said common for the same "period, at the rent of 10*s.* 6*d.* The common rights in question "were rights of common in gross. The 8*l.* paid to *Pretty* for the "house and land, &c., with the 2*l.* 2*s.* paid to *S.* and *C.* for the common rights, which the pauper enjoyed from *Midsummer* 1795 to "*Candlemas* 1796, made his rent that year 10*l.* 2*s.*" — LORD KENYON C. J. It is stated in the case that the rights of common were rights of *common in gross*; and that puts an end to the question. A common in gross *is a matter of tenure*; Lord *Coke* says

that a *præcipe* will lie for it; and there is no doubt but that the pauper rented these rights of common.

The renting by a needle-maker of two out of six pointing-places in another's mill, any two of which he was at liberty to use from time to time, at 16*l.* a year rent, and engaging also to do all his landlord's work in preference to that of others, for which he was to be paid by the piece, is not the taking of a tenement within the statute so as to gain a settlement by it.

142. *Rex* v. *Dodderhill* (*a*), *H. T.* 40 *G.* 3. 8 *T. R.* 449. — Two justices having removed *A. B.*, the widow of *W. B.*, deceased, and their six children, from the parish of *I.* to the parish of *D.*, the Sessions on appeal confirmed the order, subject to the opinion of this Court on the following case: "The settlement of *W. B.*, "the pauper's husband, now deceased, was, by birth, at *Fardebigg*. "In 1791 he went to reside in *D.*, in a house of the value of "6*l.* 6*s. per annum*, wherein he continued for three years; during "that time, being by trade a needle-maker, he worked for one "*W. Webb* in that trade, at six pointing-places in his mill, and "afterwards *Webb*, not having in general use for more than four of "them, *B.* rented of *Webb* two of the said pointing-places for more "than one year, at the yearly rent of 16*l.*, but *B.* was to do all "*Webb*'s work in preference to that of any other person, although "to do it might be necessary to use all the six pointing-places; "and *B.* was paid by the piece for all the work he did for *Webb*. "No two particular pointing-places of the six were let to *B.*; "but by his contract with *Webb* he might have the use of any two "he pleased; but work or no work, *Webb* was entitled to his rent "of 16*l.* a year from *B.* for his two pointing-places. The mill be-"longed to *Webb*. The pointing-places are frames of wood, which "support the spindles, on which grinding-stones turn, which are "moved with great velocity by means of leathern straps communi-"cating with the great wheel of the mill, which is turned by water. "The pointing-places are placed on the floor of the room, and at "each of them a man sits; and the needles are pointed by being "pressed against the grinding-stones. The pauper did not rent any "room in the mill, or any other part of it but the two pointing-"places as above stated. *W. B.* did no other act to gain a settlement "in the parish of *D.*"—PARKE was to have argued against the order of Sessions, and READER in support of it: But THE COURT said there was no pretence for calling this agreement to work in the mill, the taking of a tenement; and that it was like the case of *Rex* v. *The Inhabitants of Hammersmith* a few years ago, which was disposed of on its being first mentioned as too clear for argument. — Order of Sessions quashed.

The renting by a needle-maker of certain *runners* in another's mill, together with a packeting-room, of all which he had the exclusive use (a runner being a piece of machinery for scouring needles, screwed down to the floor of the mill,) the whole being of the annual value of

143. *Rex* v. *Tardebigg*, *T. T.* 41 *G.* 3. 1 *East*, 528. — Two justices by an order removed *A. W.* from *T.* to *A.* The Sessions, on appeal, quashed the order, subject to the opinion of this Court upon the following case: The pauper's late husband, *A. W.*, was a settled inhabitant of *A.* previous to the year 1790. In the course of that year he took of *M.* three runners for scouring needles in a mill belonging to *M.*, situate in *T.*, and a packeting-room, at the rent of 1*s. per* packet, for every packet of needles scoured thereat. About two years afterwards *M.* built a cottage for *W.*, situate near the mill in the parish of *T.*, and *W.* took the same of *M.* at the rent of 2*s.* 6*d. per* week. About two years afterwards *W.* also took of one *B.* three other runners for scouring needles in another mill, belonging to the said *B.*, situate in the parish of *T.*, at the like rent of 1*s. per* packet for every packet of needles scoured thereat. And soon afterwards *W.* took of *B.* another runner and a packeting-room in the last mentioned mill, at the rent of 2*s.* 6*d.*

(*a*) See Rex v. Warminster, *post*, pl. 257.

per week. He worked at the same respectively, and occupied the cottage and runners till the time of his death, which happened about two years ago. A runner consists of two pieces of wood, each about five feet long and eighteen inches broad: one of them is fixed with screws to the floor of the mill, which may be unscrewed and removed at pleasure: the other is moved upon it horizontally backwards and forwards, by means of a piece of timber fixed thereto at one end thereof, and which communicates at the other with the wheel of the mill: and between these pieces of wood needles are scoured in bags with oil and emery-dust. The runners so rented by *W.* were the property of *M.* and *B.* In the mills of this description there are usually in the same place several different runners worked by different workmen; but at the time when *W.* took the said three runners of *M.* they were divided by a partition from the other runners in the same mill; but the partition being found to take up too much room was afterwards removed, and *W.*, his wife, and their two children, slept in the same mill from the time they first took it until *M.* had built the said cottage, a period of about two years. One floor of a mill will contain several runners, some of which may be placed on the floor, and others immediately over: these, in a frame of wood about two feet above the undermost. For some time *W.* worked at scouring needles at the rate of 6*s.* 6*d.* *per* packet for *M.* only. Afterwards *M.*, not continuing to have sufficient employ for *W.*, he worked for other masters. No other workmen had any right to use the runners so rented by *W.* without his consent; but *W.* had the exclusive right to the use of them and the packeting-room. The materials used in scouring the needles were provided by *W.*, and the rent which he paid to *M.* and *B.* for the runners so taken of them, and for the cottage taken of *M.*, amounted, together, to more than 10*l.* *per annum*. When this case was called on, the Court asked how it could be distinguished in principle from *Rex* v. *Dodderhill.* (*a*)— LORD KENYON C. J. There is no distinguishing this from the case of *Rex* v. *Dodderhill*. A runner is no more a tenement than a pointing-place is so. It might as well be said to be a taking of a tenement if a man contracted to pound in a certain mortar, or to use a particular grinding-stone in a mill. It is not in effect a taking of a part of the mill as a tenant, but a licence to use a particular part of the machinery of it for the purpose of manufacture, and for no other purpose.—LAWRENCE J. The case of *Rex* v. *Whitechapel* (*b*) does not apply; for here the particular value of the runner is found, which is necessary to be taken into the account to make up the 10*l.* a year; and that not being a tenement cannot confer a settlement. Besides, it is not even stated that the runner is in the packeting-room which was appropriated to the pauper's use.—PER CURIAM: Order of Sessions quashed.

above 10*l.* including the separate value of the *runners*, is not the taking of a *tenement*, whereby a settlement can be gained.

(*a*) *Ante*, pl. 142.

(*b*) *Ante*, pl. 132.

144. *Rex* v. *Mellor*, *H. T.* 42 *G.* 3. 2 *East*, 189.—The pauper, being legally settled in *Mellor*, took a house in *Stockport*, in the county of *Chester*, of the value of 5*l.* a year, which he occupied for more than 40 days; and also took from the owner of a mill in *Stockport*, worked by a steam-engine, *a standing-place in a room for a carding-machine* of his own, which was worked by the machinery of the steam-engine, and fastened to the floor, and the roof of the room. He was to pay his landlord 20*l.* a year; and agreed with him that each should give the other three months' notice to

A contract for a *standing-place in another's mill* for a carding machine (the party's own property) which was fastened to the floor and the roof, for the

purpose of being worked by the steam-engine of the mill; for which the party was to give 20*l.* a year, with liberty to quit on three months' notice, is not a taking of a tenement; but a mere licence to use the machinery of the mill; and therefore no settlement can be derived under it.

quit. He occupied this at the same time with the house for more than 40 days. There were other tenants who had carding-machines in the same room upon similar terms; and they, as well as the owner of the mill, were respectively furnished with keys to it. The owner's key was a master key to all the rooms in the mill. —GROSE J. The question is, Whether what the pauper contracted for were a tenement? The magistrates state it to be a *standing-place* in a room in the mill, for the purpose of placing there a carding-machine of his own, which was to be worked by means of the general machinery of the mill. Now what is that more or less than contracting for a liberty to go and stand there for the purpose of working at his trade? It has been attempted to distinguish this case from those of *Dodderhill* and *Tardebigg*, which are admitted to have been properly decided: but I have listened in vain for any solid distinction to be shown between them: and we must take care not to give way to refined and subtle distinctions on these subjects, which at last leave the magistrates below no clear rule to go by. Therefore, without entering into any further reasoning on the subject, which will only furnish fresh arguments for doubts on future occasions, I think this was a contract for nothing more than a liberty for the pauper to stand and work his machine in a room of the mill; and that it conferred no settlement upon him. —LAWRENCE J. This case is governed by those of *Rex* v. *Dodderhill* (*a*) and *Rex* v. *Tardebigg* (*b*), from which it has been endeavoured to distinguish it by saying that those were only licences to use certain machines belonging to the owners of the mills; whereas this is a hiring of part of the mill itself; because it cannot be supposed that the pauper contracted for a licence to use his own machine. But it is to be observed, that the contract here is not pretended to be for the use of the pauper's own machine, but for a licence to make use of the steam-engine of the mill, by applying to it his own machine. Now what difference can there be between a licence to use another's machine, and a licence to apply the party's own machine to the machinery of another's mill? But it is said, that the pauper contracted for the standing-place in the room where the machine was to be put. To be sure he must have a place to stand and work the machine, otherwise the contract was absurd and nugatory: but how does that differ from a general licence for him to use the machinery there? Therefore on this plain ground, that the contract was for a mere licence for the pauper to use the machinery of the mill, and not a letting of any part of the mill itself, I am of opinion that no settlement was gained in *Stockport*. —LE BLANC J. The substance of the contract was for the use of the machinery, and not a hiring of any part of the room in the mill. It was a hiring of the use of the mill-owner's machinery, as in the other cases referred to; with this difference, that instead of using the owner's machine, he was to apply his own machine to the moving power of the mill, in order to enable him to work it with facility. But whether he contracted for the use of the mill-owner's machinery directly, or by the intervention of some other machine of his own applied to the other is exactly the same thing. —Order of Sessions confirmed. (*c*)

(*a*) *Ante*, pl. 142.

(*b*) *Ante*, pl. 143.

(*c*) Rex v. Londonthorpe, 6 T. R. 377, where the Court held, that the value of a post windmill erected by a tenant on land rented by him, (which land in itself was under the value of 10*l.* *per annum*), could not be taken

Renting a dairy (including the cows and their pasture) at above 10*l.* a year in value, will not confer a settlement, if the annual value of the lands on which the cows were to be depastured were under 10*l.*

145. *Rex* v. *Minworth* (*a*), *H. T.* 42 *G.* 3. 2 *East*, 198. — The pauper, being settled in *W.*, afterwards rented under a verbal agreement from *Lady-day* 1800 till six weeks after *Michaelmas* 1800, two cows, at the rate of 5*s.* a cow *per* week, of *J. Griffiths*, who was the tenant and occupier of certain lands in *Minworth*. It was also agreed between the parties, that the owner of the cows should feed and support them; and for that purpose such cows should feed and depasture in the lands of *Griffiths*, and also in certain other lands called the *Lower Ropes* and *Minworth Field*, after the said last-mentioned lands should be mown; all of which lands were in *Minworth*; but the lands on which the said cows were so depastured were not of the annual value of 10*l.* *Griffiths* was not to feed any other cattle in any of the above mentioned lands whilst the same were depastured with the cows so rented by the pauper. The contract continued in force for the space above mentioned, during the whole of which time the pauper resided in *Minworth*.— GROSE J. This case is very plain. Unless the pauper occupied a tenement of 10*l.* a year value he could gain no settlement. And that fact is expressly negatived; for it is stated that he rented two cows, which were to be fed on particular lands, and that those lands were not of the annual value of 10*l.* That makes an end of the question. The principle on which the renting of dairies (as it is called) has been holden to confer a settlement is, that in truth and effect it is a contract for a certain interest in the land to be enjoyed in a particular manner: that alone constitutes it the taking of a tenement: and in each of the cases which have been decided on that ground, it was understood that the land itself was of the requisite value. Then in analogy to all the cases in *pari materiâ* we are bound to say, that the pauper did not gain a settlement by the renting and occupation in question.— LAWRENCE J. In the case of *Rex* v. *Tolpuddle*, the ground on which the Court went was, that the contract there stated gave the pauper a right to take the produce of the land by the mouths of the cattle; and that it was the same as if he had rented so much pasture for cows to the value of 10*l.* a year. The value of the cows hired was never taken into consideration as forming part of the value of the tenement. Nothing can be concluded against this from the case of *Rex* v. *North Bedburn*. For it seemeth to be the object of one of the parties at the Sessions to distinguish between the value of the land and of the things leased with the land; and the Sessions let them into that evidence (being parol evidence of the lease which the lessor had refused to show, and which was not then produced); and this Court held that the Sessions had done right. That rather shows that the distinction was considered to be material; but it was not established in point of fact. The case of the warren falls under a different consideration: the produce of a warren is the rabbits as much as the produce of a fishery is the fish. But that is not like a contract for the hire of cows.— LE BLANC J. In the former cases the Court held that the renting of a dairy with land which

into the account so as to raise the annual value above that sum; it being a mere personal chattel, not fixed to the freehold, which the tenant was at liberty to remove at the end of his term, and therefore no tenement.

(*a*) See Rex *v.* Stoke-upon-Trent, *post*, pl. 149.

was of the annual value of 10*l.* was the same as renting land of that value, the produce whereof was to be taken by the cows. But that is not like a contract for the hire of cows with the use of land under the value of 10*l.* a year. With respect to other cases, where the value of land has been raised to that amount by things erected upon it, the Court has resisted the attempt to separate the value of the land from that of the erections attached to it. Such seems to have been the case in *Rex* v. *North Bedburn*. But that differs greatly from the present case, where the renting is of cows which are not annexed to the land. — Order of Sessions quashed.

One who resided on a tenement of 5*l.* a year in the parish of W. and at the same time rented *the ley* (*i. e.* pasturage) *of two cows* from *May-day* to *Michaelmas* in certain land in H. at 6*l.* 6*s.* thereby gains a settlement in W., though he were not entitled to the *exclusive* pasturage of the land in H.

146. *Rex* v. *Hollington* (*a*), *M. T.* 43 *G.* 3. 3 *East*, 113. — The pauper being legally settled at *H.*, under a hiring and service for a year, went to reside in the parish of *St. W.*, and occupied a house there of the annual value of 5*l.* During the time the pauper occupied this house he rented the ley of two cows (*b*) from *May-day* to *Michaelmas*, at 6*l.* 6*s.* in a large pasture containing 100 acres, and of the annual value of 250*l.*, belonging to Mr. *Mundy*, at *Markeaton*. The pauper had not the exclusive pasture of this land, and Mr. *Mundy* was under no restriction as to what number of cows he kept in it. The Sessions were of opinion that this ley of the cows was not a tenement, and therefore that the pauper did not acquire a settlement in the parish of *St. W.* — LORD ELLENBOROUGH C. J. If this had been a new question, I might have thought that the statute was intended to refer only to corporeal hereditaments; but an incorporeal hereditament has been so long ago decided to be a tenement within the meaning of it, that it is now too late to overrule it. Lord *Kenyon* repeatedly declared himself to be of that opinion, and did so in the cases cited. The present case is nothing more than a common in gross (*c*), which has been holden to be a tenement within the statute. As to the argument that Mr. *Mundy* is not restrained from putting in as many cows as he pleases, and that there might be a deficiency of pasture; no fraud is found; the landlord let the pasture of two cows, and if he overstocked the land the tenant might recover in damages. — GROSE J. was of the same opinion. — LAWRENCE J. In *Rex* v. *Piddletrenthide* (*d*) Mr. Justice *Buller* states, that the question in cases like the present is this, Whether or not it be *a contract to receive profits out of land?* If that be so, it determines this case: for here the cows were the pauper's own, and the contract, which was for the pasturage of them was, to use the words of Lord *Kenyon* in the same case, a contract *for the pernancy of the profits of the land by the mouths of the cattle.* — LE BLANC J. was of the same opinion. — Both orders quashed.

(*b*) The cows were the pauper's own.

(*c*) Vide Rex *v.* Whixley, *ante*, pl. 134.

(*d*) *Ante*, pl. 137.

Where a corporation by a verbal agreement with the pauper leased to him the tolls of a market for above 10*l.* a year: Held that he could not gain a settlement thereby, *as no* interest

147. *Rex* v. *Chipping Norton*, *T. T.* 44 *G.* 3. 5 *East*, 239. — Two justices removed *S.* the wife of *W. T.* and their children, by name, from the parish of *C. N.* to the hamlet of *O. N.*: and on appeal the Sessions stated specially that *W. T.*, whose wife and children were removed, being legally settled in the hamlet of *O. N.*, went, about eight years ago, to live at *C. N.*, where he rented a house at 8*l.* 10*s. per annum*. The corporation of *C. N.* is possessed of the fairs and markets within the borough, and of the toll for all cattle *actually sold at the same*. *W. T.*, at the court leet, took the said toll by a verbal agreement of the corporation at 12*l.* a year, and continued to collect it under that agreement for

(*a*) See Rex *v.* Stoke-upon-Trent, *post*, pl. 149.

two years, when it was agreed that he should have it for 10*l.* 10*s.* under which last agreement he continued to collect it for several years more. Whereupon the Sessions were of opinion that *W. T.* gained a settlement *by virtue of renting a tenement of upwards of* 10*l. a year;* and discharged the order; subject to the opinion of this Court.—LORD ELLENBOROUGH C. J. thereupon said, that as no interest passed to the pauper by such parol demise, the question could not be raised. It was a mere licence to him to collect the tolls, the right to which still remained in the corporation; though it might be a ground on which to apply to a court of equity. The Court, he added, had gone far enough from the words of the statute in noticing an incorporeal tenement as one the taking of which could confer a settlement; but if, beyond that, they were to hold that an equitable interest in an incorporeal tenement under a parol demise from a corporation, which could only demise by deed, could confer a settlement, there would be no saying where to stop. His Lordship, however, added, that if this last difficulty could be gotten rid of by any alteration in the statement of the case, he thought that the other point, as to the taking of the tolls being a taking of a tenement within the construction which had been put upon the statute, might be disposed of in favour of the settlement, upon the authority of Lord *Coke*, in his comment upon the statute of *Westminster*, 2., and on *Webb*'s case, 8 *Rep.*, and on the opinion of Lord *Kenyon*, in the case referred to, that a taking of an incorporeal tenement will confer a settlement.—THE COURT, therefore, directed an inquiry to be made whether any interest in the tolls had passed from the corporation under their seal to the pauper, or any person under whom he might claim: and in the mean time they made an order *nisi* for quashing the order of Sessions, if no such fact existed. And after inquiry made, it being reported to the Court on a subsequent day that no other instrument had been executed except a bond given by the pauper to the corporation with sureties for the rent, the Court said that could convey nothing *from* the corporation: and the rule stood for quashing the order of Sessions.—Order of Sessions quashed.

could pass from a corporation but under their seal: therefore he had no more than a mere licence to collect the toll; but if such toll had been leased to him under seal of the corporation, semble that he would have gained a settlement by residing for 40 days in the same parish where the market was.

148. *Rex* v. *Denbigh* (*a*), *T. T.* 44 *G.* 3. 5 *East*, 333.—The paupers being legally settled in *Denbigh*, on the 14th of *May* 1802, *Robert Hughes* agreed with the toll-taker in *H.* to go and receive the tolls in the turnpike house in *H.*, as the servant and for the use of the toll-taker; for which he (the pauper) was to be paid 3*s.* 6*d. per* week. The pauper went there accordingly; and in about a fortnight afterwards, while he was at the turnpike-gate-house, took from one *E.* a field in *H.* at the rent of 12*l.* a year and gave him 6*d.* earnest. The pauper continued in possession of that field for two or three months, and resided day and night during that time with one of his children at the turnpike-gate-house. In the course of two or three months after the pauper had taken the said field, *E.* coming by the turnpike-gate told the pauper that he was uneasy on account of the rent, and asked the pauper to give him some security; to which the pauper answered, that he could not give him any security, but had no objection to give up the field, and he did then give it up accord-

One may gain a settlement by *renting a tenement of above* 10*l. a year*, in the parish where he *resided*, though such residence were *in a turnpike-house*, as servant to the collector for whom he received the tolls: for the general turnpike act 13 G. 3. c. 84. § 56. only says that "no gate-keeper or person renting the

(*a*) See Rex *v.* Bardwell, *post*, pl. 160.

tolls and residing in the toll-house, shall *thereby* gain a settlement," *i. e.* by such taking the toll-house or renting the tolls.

ingly. The pauper took the field for the purpose of getting hay and grass to keep his mare, but he never reaped any benefit from the field, nor did he turn his mare into it, because the hay was growing. The pauper continued at the turnpike-gate-house for 12 months after he had given up the field, receiving for part of that time 4*s.* 6*d.* and latterly 5*s.* *per* week from the taker of the turnpike-gate as aforesaid. The pauper's wife and three of his children lived during that time in a house in *D.*, for which the pauper paid 3*l.* 3*s.* *per annum;* but they sometimes slept with him at the turnpike. The turnpike-gate-house is the property of the commissioners of the turnpike road, but is always set with the tolls to the toll-taker, and was so set while the pauper lived there and received the tolls there for such toll-taker as aforesaid. — The Sessions were of opinion that the pauper had *bonâ fide* holden lands to the value of 10*l.* a year in the parish of *H.* for above 40 days, and lived during such holding at the said turnpike-gate-house, as before stated; but reversed the order of removal in this case on the ground of the act of 13 *G.* 3. *c.* 84. § 56., which enacts, "That no gate-keeper of any turnpike road, or person "renting the tolls thereof, and residing in any toll-house belonging "ing to the said trust, shall be removeable from such toll-house, "&c. unless he shall become actually chargeable to the parish, "&c. in which such toll-house is situate. And that no such gate-"keeper, or person renting such tolls, and residing in such toll-"house as aforesaid, shall *thereby* gain a settlement in any parish "or place whatsoever; and that no tolls to be taken at any gate "erected or to be erected by the trustees of any turnpike road, "nor any toll-house erected or to be erected for the purpose of "collecting the same, nor any person in respect of such tolls or "toll-house, shall be rated or assessed towards the payment of "any poor's rate or any other public or parochial levy whatsoever." — THE COURT, however, thought the case too clear for further argument; and LORD ELLENBOROUGH C. J. said, the act only says that a gate-keeper shall not *thereby* gain a settlement, that is, by keeping the gate or *renting the tolls* and residing in the toll-house. But that does not prevent him from gaining a settlement *aliundè* in the same parish where the gate-house is situated. This man did not gain a settlement by renting the tolls or by keeping the gate, but by renting a close in the parish worth above 10*l.* a year for more than 40 days, and residing in the same parish. He did not even rent the tolls: he was no more than a mere servant to collect the tolls for another. — PER CURIAM: Order of Sessions quashed.

Renting the hire or privilege of milking two cows belonging to another at so much *per* week *per* cow for 40 weeks, which cows were to be *depastured* by the owner on his farm in *common with*

149. *Rex* v. *Stoke-upon-Trent*, *H. T.* 49 *G.* 3. 10 *East*, 496. — Removal from *S.* to *N.* — Order quashed, subject, &c. The pauper, about seven years ago, under a verbal agreement, rented and paid for the hire and privilege of milking two cows belonging to Mr. *R.* the sum of 5*s.* 6*d.* a week each cow, for 40 successive weeks. The two cows were, by the terms of the agreement, to be depastured by Mr. *R.* on his farm at *N.*, in common with his other cows, and were, in fact, depastured on such of the lands belonging to the farm as Mr. *R.* thought proper, in common with his other cattle. The pauper never went on the lands to fetch them; but they were regularly brought up with Mr. *R.*'s other

cows to the fold yard, and there milked by the pauper and his family. During the time the pauper so rented the said cows, he resided in the parish of *N.*, at a cottage for which he paid 50*s.* a year; and the depasturing of the two cows for the time aforesaid, on the lands of Mr. *R.* was, together with the cottage, worth more than 10*l.* a year. The cases of *Rex* v. *Lockerley* (*a*), *Rex* v. *Whixley* (*b*), *Rex* v. *Stoke* (*c*), *Rex* v. *Piddletrenthide* (*d*), *Rex* v. *Tolpuddle* (*e*), *Rex* v. *Hollington* (*g*), *Rex* v. *Minworth* (*h*), *Rex* v. *Hammersmith* (*i*), *Rex* v. *Tisbury* (*k*), were cited. — LORD ELLENBOROUGH C. J. There is no solid distinction between this and the case of *Hollington*. There the pauper had only hired the depasturing of his own cows in common with the cattle of the owner in a certain land; here he hired the cows themselves, which for this purpose are the same as his own, together with their depasturing in common with the owner's other cattle, upon a certain farm, all included in one contract. If the cows here had been the pauper's own, this case would have been identically the same as the former; but that fact was no material ingredient in the former case, for the cows are his own for the time that he hires them; and in some of the other cases where settlements were obtained under contracts of this kind, the cows were hired as well as their feeding. Therefore, without going at large into the general question which was agitated in those cases, I think that, consistently with the decisions, this must be deemed to be the taking of a tenement. — GROSE J. It is now too late to unsettle the law which has been established by former decisions. It is said that this is only a contract for a right to milk cows, but it is more, for it is a contract to take the milk of cows to be depastured on a certain farm, which is purchasing *pro tanto* the interest in those pastures on which the cows were to be fed. And this falls within the former decisions on the renting of dairies. — LE BLANC J. It is only the words used in stating this case which make any real difference between it and former cases, but it falls within the same principle. The only difference between this and *The King* v. *Piddletrenthide* is, that there it was stated to be the renting of a *dairy*, which is only a contract for the hire and privilege of milking cows; which, during the time, are to be depastured on the owner's land. But there the cows were to feed in particular grounds at particular seasons of the year; and here they were to be depastured on the farm in common with the owner's other cattle. In *The King* v. *Tolpuddle*, the agreement was, as here, for the owner's cows at so much a head; and though they were to have the exclusive pasturage of certain grounds during part of the year, yet that has since been held to make no difference. "If," said Lord *Kenyon* in the latter case, "the cattle "had been the pauper's own, and he had rented the feeding of "them, that would have been unquestionably a tenement; like "the taking of the pasture, the hay, and aftermath; and I think "that these were the pauper's for a certain period, &c.; and this "was not the less a taking of a tenement, because the pauper "could only enjoy the land in a particular mode." The same reasoning will apply to this case. In *The King* v. *Minworth*, there was no doubt made but that the contract was for the taking of a tenement; but the value of the land on which the two cows

his other cattle, and were to be milked by the pauper, will gain him a settlement if the pasturage of the cows be worth 10*l.* a year.

(*a*) *Ante*, 86. n.
(*b*) *Ante*, pl. 134.
(*c*) *Ante*, pl. 136.
(*d*) *Ante*, pl. 137.
(*e*) *Ante*, pl. 139.
(*g*) *Ante*, pl. 146.
(*h*) *Ante*, pl. 145.
(*i*) *Ante*, pl. 140.
(*k*) 2 Nolan, 19.

were to be depastured, did not amount to 10*l.* a year, and, therefore, no settlement was gained. Now here the pauper contracted for the milking of two specific cows (not any two cows), which were to be depastured on the farm of the owner, together with his other cattle; the value of which pasturage, together with the cottage rented by the pauper during the same time, amounted to more than 10*l.* a year. Then it was decided in *The King* v. *Hollington*, that hiring the feeding of cows for a certain time, in common with the cattle of the owner of the pasture in which they are to be fed, is a taking of a tenement. This, then, is the same as if the pauper had hired the cows at so much, and the pasture for feeding them at so much more, though the two sums were compounded in one. And it being found here that the value of the pasturage, together with the cottage, amounted to 10*l.* a year, the pauper gained a settlement. — BAYLEY J. This is a hiring of two cows, with the right of having them depastured on lands in the parish. The cases of *Piddletrenthide* and *Tolpuddle* determined that it was not necessary that the cows should be the pauper's own; and the case of *Hollington* determined that the pauper need not have the right to the pasturage, exclusive of the cattle of other persons. Those three cases, therefore, have decided the present. The agreement here was that the owner should *depasture* the cows upon his farm in the parish; which must mean that they were to be fed on the pasture growing on the land: if, therefore, he had fed them in any other way, it would have been a breach of his contract. — Order of Sessions quashed.

A person, renting the tolls and residing in the turnpike-house erected by order of the commissioners appointed by the 30 G. 3. c. 67. for paving, lighting, and regulating the streets of *Durham*, and for other local objects, cannot gain a settlement in the parish, by the general turnpike act, 13 G. 3. c. 84. § 50.

150. *Rex* v. *Elvet* (*a*), *E. T.* 49 *G.* 3. 11 *East*, 98.—Removal from *W. R.* to *E.* Order confirmed, subject, &c. By an act of the 30 *G.* 3. *c.* 67. certain *commissioners* are appointed for lighting, widening, and improving, &c. the streets of *D.*, and to enable them so to do, the act authorises them to take certain tolls, and appoint proper persons to collect them in the streets of *D.* By the 32d clause it is provided, that if it should appear to the commissioners expedient to collect the tolls at toll-houses or turnpikes, it should be lawful for them to erect two turnpikes on the great north road, one to the south, the other to the north of the city, for the purpose of collecting the tolls; and that the right and property of all such turnpikes and toll-houses should be vested in the commissioners; and the 36th clause empowers the commissioners to lease the tolls. By virtue of this act the commissioners erected a turnpike-gate and house for collecting the tolls at a place called *Farewell Hall*, upon the great north road, within *E.*, and in 1796 demised the same with the tolls to the pauper for three years, at the yearly rent of 202*l.* Under this lease the pauper entered into the toll-gate and house, and continued to reside there with his family, collecting the tolls for the said term. The tolls were collected and appropriated to the general purposes of the act. Neither the tolls nor the gate-houses, nor the respective lessees were assessed to the poor's rate. The Sessions were of opinion, that the said gates and houses were not such gates and houses as are within the meaning of the 36th sect. of the general turnpike act, 13 *G.* 3. *c.* 84., and that therefore the pauper acquired a settlement in *E.*, by residing at the *Farewell Hall* turnpike, and renting the said tolls and gate-house there. By § 56. of the general turnpike

(*a*) See Rex *v.* Bubwith, *post*, pl. 152.

act, "no gatekeeper of any *turnpike road*, or person renting the "tolls thereof, and residing in any toll-house belonging to the "said trust," shall be removable from such toll-house till actually chargeable. And no such gatekeeper, &c. shall thereby gain any settlement.—HULLOCK, in support of the order of Sessions, contended, that the above-mentioned clause in the general turnpike act was confined to tollgatekeepers, &c. appointed by the *trustees* of *turnpike roads*, to collect the tolls for such turnpike *roads*: whereas the tolls here were collected by order of the commissioners appointed by a local act for various local purposes, amongst others for repairing the *streets* of the city of *D.*, and not for the repair of turnpike *roads* within the meaning of the general turnpike act.—PER CURIAM: There is no difference in effect though the appellation of *turnpike road* does not occur in the local act; the one is a stone road, the other a gravel road; and every character belonging to a turnpike road belongs as well to this. The commissioners are trustees for the repair of the roads: and this case is within the prohibition of the 56th clause in the general turnpike act. — Order of Sessions quashed.

151. *Rex* v. *Darley Abbey*, *T. T.* 51 *G.* 3. 14 *East*, 280. — Removal from *Duffield* to *Darley Abbey*. Order confirmed, subject, &c. The pauper for two years resided in a house, and occupied a garden, in *Darley Abbey*, of the annual value of 8*l.* 18*s.*; and during the whole of that time he and one *J. M.* jointly hired the milking of a cow in the following manner: the pauper applied to Mr. *E.*, at whose factory he and *M.* worked, for the milking of a cow betwixt them. Mr. *E.* referred the pauper to his agent, Mr. *H.* to agree for the cow. Mr. *H.* agreed that they should have a cow for the season for 9*l.* The particular cow was pointed out. The cow was at that time upon a large farm of Mr. *E.*, which he occupied near the factory. Nothing was said as to how or where the cow should be fed, more than Mr. *H.* said, that *Jerom*, Mr. *E.*'s farming man, would inform the pauper in what pasture the cow would be first milked: and he did inform him; and so from time to time, when the pasture was changed, that he might know where to go to milk her. The cow was grazed in Mr. *E.*'s pastures in the same farm for the whole of the two seasons with other cows, which were let in the same way to other workmen of Mr. *E.*, and with other cattle belonging to Mr. *E.* The pauper and his partner always milked the cow during the whole time. They hired the same cow for four successive seasons, and the cow was always grazed in the same way, on Mr. *E.*'s farm. The summer pasturage of the cow alone was admitted to be of the value of 5*l.* for each season. — It was contended against the orders, that this case was distinguishable from all former cases, where the settlement had been established by takings of this kind; for in all of them it was part of the terms of the contract, that the cows were to be *depastured* by the owner; and that here nothing was said as to where the cows should be fed; and the owner was under no obligation to graze the cow at all, or to graze her on his own land. And *Rex* v. *Tisbury* (*a*), was cited. — LORD ELLENBOROUGH C. J. It has been too long ago decided to be now shaken, that the hiring of the feeding of cows is a sufficient taking of a tenement to confer a settlement within the statute, if the

Where the pauper applied to the owner of a farm for *the milking of a cow*, which it was agreed that he should have *for the season*, for 9*l.*, and the particular cow was then pointed out, though nothing was said as to how or where the cow was to be fed; further than that he was then told, that the owner's farming man would inform him *in what* pasture *the cow would be first milked*; of which he was afterwards informed, and so from time to time as the pasture was changed: Held, that this was sufficient evidence of a contract for the taking of a *pasture fed* cow, and by conse-

(*a*) 2 Nolan 19.

quence of a tenement within the statute, so as to confer a settlement on the pauper, who rented another tenement at the same time of the annual value together of 10*l.*

tenement be of sufficient value: and here the necessary value is made up by the contract which the pauper entered into for hiring the milking of a cow in the manner stated in the case. A contract for the mere milking of a cow is, indeed, no more than a contract for a personal thing; and, therefore, unless through the medium of the cow he contracted for the pernancy of the profit of the land, there could be no settlement gained: but the question is, whether by this contract, explained as it is by the subject-matter and the circumstances, the owner was not to furnish the pauper with a cow to be fed upon the land. Where parties understand the subject of their contract, a few words are sufficient for the terms of it, and sometimes it may be collected from their acts without words. Here the contract was made by the pauper with a man who had a farm and cows then feeding on it; to him the pauper applied, as the case states, for the milking of a cow, and *H.* agreed that the pauper should have a cow *for the season* for 9*l.*, and the particular cow was pointed out: the term, "season" would import, according to the subject-matter, during the time that the grass grew on the land to feed the cow. The cow was then fed upon the owner's farm; but nothing was *said* how or where the cow was to be fed; that is, the particular land on which the cow was to be fed was not mentioned, but the pauper was told in what *pasture* the cow would be first milked, and whenever the pasture was changed he was informed of it. Then is it not fairly to be understood, when the cow was always to be milked on pasture-ground, that she was also to be fed there? What could be meant by changing the pasture, but for the purpose of her being fed on fresh pasture? If then the owner had fed the cow on dry food, as grains, instead of pasture, it would have been a breach of the contract. The parties meant to contract for a pasture fed cow for the purpose of milking. The principle established by the former cases cannot be now questioned; and this case is governed by it. — GROSE J. The pernancy of profits of land must be established, in order to confer a settlement by this kind of contract; and here I think it was established. — LE BLANC J. It has been long settled that the hiring of a dairy of cows, whether consisting of one or more cows, where the person who lets the cows is to feed them on land, is such a taking of a tenement within the statute as will give a settlement. Nobody who reads this case can doubt that this was a hiring by the pauper of a cow to be fed on the pasture of him who let it. The facts are, that the pauper applied to Mr. *E.*, the owner of the farm on which there were cows, for the milking of a cow: the owner referred him to his agent *H.*, with whom the pauper agreed for a cow for the season at 9*l.*, and a particular cow was pointed out. And though nothing was said as to how or where the cow was to be fed, yet *H.* told him that the owner's farming-man would inform him in what pasture the cow was to be first milked; that is, on what particular pasture she was then fed. Is it not evident from this that it was a contract for the hire of a pasture-fed cow? It is objected that no specific land was pointed out on which the cow was to be fed; but that need not be agreed upon, nor need it have been fed upon the *same* land upon which the owner was *residing*. It is clear, however, that this cow was to be fed upon *the farm in the occupation of E.*, or upon land that he was to

provide for her; and, in fact, she was depastured upon the farm all the season. — BAYLEY J. The magistrates ought not to be induced to send up cases for our opinion, if they have no doubt upon the question in their own minds, in order to avoid incurring unnecessary expences. Here there can be no doubt that the contract was for the milking of a cow, which should be pasture-fed during the season, either upon land of the farm in the parish where the parties contracted and were residing, or at least within a reasonable distance of it, in order that the pauper might have a convenient opportunity of coming to milk the cow. And if the owner had fed the cow otherwise than upon pasture, an action by the pauper would have lain for a breach of the contract. — Order of Sessions confirmed.

Renting the tolls of a bridge vested by act of parliament in a company of proprietors who are declared a corporation, will confer a settlement, although the tolls were made *personal* estate, and the renting is not stated to be by *deed*. The 13 G. 3. c. 84. (general turnpike act) which prohibits persons from gaining a settlement by renting the tolls of turnpike roads, does not extend to the tolls of a bridge, which bridge does not appear to be part of the turnpike road.

152. *Rex* v. *Bubwith*, *E. T.* 53 *G.* 3. 1 *M. & S.* 514. — Removal from *B.* to *F.*; order quashed, subject, &c. The pauper, being settled at *F.*, rented, for one year, the tolls and toll-houses of *B.* bridge. Those tolls were collected by virtue of an act of parliament passed in the 33d year of His late Majesty, intituled, "An act for building a bridge over the river *Derwent*, at or near "*B.* ferry, and making proper approaches thereto." The tolls and toll-house were of the annual value of 70*l.* The value of the toll-house alone was less than 10*l.* *per annum*. By the beforementioned act of parliament the tolls are vested in the company, and the shares of the proprietors are made *personal* property. — RICHARDSON, against the order of Sessions, contended, first, that these tolls were not such an interest in the land as would constitute a tenement, but were merely payments for the liberty of passing over the bridge, which the act had declared to be personal property: and second, that an objection arose upon 13 *G.* 3. *c.* 84. *s.* 56. (the general turnpike act) which prohibits any gate-keeper or person from gaining a settlement by renting the tolls of turnpikes, or residing in any toll-house, and that although this act has no similar clause, yet the bridge, being part of the turnpike, falls within the provisions of the general act, and cited *Rex* v. *Elvet*. (*a*) — LORD ELLENBOROUGH C. J. It is true the words "turnpike "roads" did not occur in the act upon which *Rex* v. *Elvet* was decided. But the commissioners under that act were trustees of the road; and it was to all intents considered as a turnpike-road. As to the renting, it is enough for us to decide on the doubts which the Sessions actually entertained, and they have not stated any doubts upon that subject; for they have stated simply that the pauper rented the tolls, which must be understood a legal renting. Then the only question remaining is, whether tolls are a tenement. There is no doubt that they are so generally; but it is said that here they cannot be so, because the act has made the shares of the proprietors personal estate. That, however, does not make them less a tenement in the hands of the persons to whom demised. Suppose the act had vested the shares in the proprietors for a term of years, they would still have been a tenement. — LE BLANC J. In *Rex* v. *Elvet*, the Court deemed it a turnpike-road; the act enabled the commissioners to erect turnpikes on the high road. — Order of Sessions confirmed.

(*a*) *Ante*, pl. 150.

Renting a certain number of lugs of land at

153. *Rex* v. *West Cramore*, *M. T.* 54 *G.* 3. 2 *M. & S.* 132. — Removal from *M. D.* to *W. C.* Order confirmed, subject, &c. The pauper being *settled at W. C.*, *rented* a house at *M. D.*, of

so much *per* lug, for the purpose of planting potatoes, where the pauper agreed to take the land of the landlord ready ploughed and manured, and when he entered upon it, it was quite prepared, was held to be a renting of land of a yearly value, as it was increased by being ploughed and manured by the landlord, although when the pauper *took it* the ploughing and manuring was begun *but not finished.*

(*a*) *Post*, pl. 210.

the value of 8*l. per annum*, and occupied and resided in it for four years. During one year of his tenancy, he rented 194 lugs of land, at the rate of 9*d. per* lug, amounting to the sum of 7*l.* 6*s.* 9*d.* for the purpose of planting potatoes. The pauper agreed to take the land ready ploughed and manured; and *when he took it the ploughing and manuring was begun, but not finished,* but when he entered upon it, it was quite prepared. At the time of planting he followed the person of whom he took the land, to plough, and planted the potatoes himself, which were afterwards covered in by the plough. The land, without being ploughed and manured, was worth about 2*l.* 8*s. per annum*, but being ploughed and manured was worth what the pauper paid for it. It was attempted to distinguish this case from that of *Rex* v. *Ringwood* (*a*), because there the land had been dug by the landlord before the letting; whereas here it is found that the ploughing and manuring was not completed when the pauper took the land. — LORD ELLENBOROUGH C. J. The pauper agreed to take a tenement, which should be of a certain value; and at the time when he entered on it, it was of that value; for the ploughing and manuring were then finished. — LE BLANC J. The distinction endeavoured to be made does not vary the case; and it does not appear that any precise sum was agreed to be paid for the labour. The observation alluded to from *Rex* v. *Ringwood* must be taken with reference to the case then before the Court, and to the context where it is found, rather than as a general observation or applicable to a case of this kind. — Order of Sessions quashed.

Where five persons, as members of a managing committee of a corporation, who were proprietors of a bridge and the tolls thereof, demised the toll-house and tolls to the pauper, for one year, reserving a rent to the corporation and a power of re-entry, but the demise was not under the corporation seal, but only under the seals of the five individual members: Held, that the pauper did not gain a settlement by occupying the toll-house and tolls above 40 days, and that his *having paid*

154. *Rex* v. *North Duffield, M. T.* 55 *G.* 3. 3 *M. & S.* 247. — Removal from *S.* to *N. D.* Order confirmed, subject, &c. By the 33 *G.* 3. "For building a bridge over the river *Derwent*," &c., certain persons are constituted a corporation, by the name of The Company of Proprietors of the *Derwent* Bridge, and are empowered to have a common seal, &c. In pursuance of this act a bridge was built over the *Derwent*, and a house erected, where tolls are collected by virtue of the act. In *February* 1811, the pauper entered into the occupation of this toll-house, and the tolls there received, in pursuance of an instrument of that date, by which five persons, therein described as five of the members of a committee appointed for the managing and carrying on the affairs and business of the company of proprietors of *Derwent* bridge, demised to the pauper the toll-house and toll-bar, together with the pontage and tolls, dues, payments, and duties arising therefrom, to hold for one year, at a certain rent; and the pauper, together with his surety, covenanted with the said five persons to pay to the said company the said yearly rent, and that in default thereof it should be lawful for the company or their treasurer to enter upon the toll-house, &c. and receive the tolls, &c. This instrument was signed and sealed by the respective parties, but the seals of the said five persons were only their private seals, and the corporation seal was not affixed to this instrument. The pauper continued in the occupation of the toll-house and the tolls above 40 days, and paid rent for the same. The toll-house is situate and the tolls receivable in the township of *N. D.* The annual value of the toll-house did not exceed 5*l.*, but the annual value of the tolls greatly exceeded 10*l.*, and they were let for 70*l.* The case of *Wood* v. *Tate* (*b*), *was cited.* — LORD ELLENBOROUGH C. J. The residence in the

(*b*) 2 N. R. 247.

toll-house, if it had been of sufficient value, might have answered the purpose of a settlement, but there the value fails, and the tolls are not things which lie in tenure, but only in grant; therefore without a deed, an interest in them could not pass. In the case cited, putting the lease out of the question, the party admitted a tenancy by the payment of rent. — LE BLANC J. In *Wood* v. *Tate* the plaintiff in replevin was the party distrained upon, and had paid rent to the very persons by whose authority the distress was made; he was therefore estopped from denying that he held under them. He had acknowledged a holding by the payment of rent. — BAYLEY J. *Wood* v. *Tate* shows the distinction between land and incorporeal hereditaments. — Order quashed.

rent for the same made no difference, the annual value of the toll house without the tolls not exceeding 5*l*.

155. *Rex* v. *All Saints in Derby*, *E. T.* 56 *G.* 3. 5 *M. & S.* 91. — Removal from *All Saints* to *St. Peter's*. Order quashed, subject, &c. The pauper being legally settled in *St. Peter's*, under an order of common hall of the corporation of *Derby*, agreed with the corporation to give them 10*l.* a year for the liberty of getting sand and gravel in the bed of the river *Derwent*, and got the sand and gravel accordingly, and to any depth he chose, for upwards of a quarter of a year, and paid 2*l.* 5*s.* to the corporation for the same, and then the agreement was put an end to by mutual consent. The question was, Whether the liberty to get sand and gravel, under the above circumstances, was in law a settlement? — LORD ELLENBOROUGH C. J. This was a tenement as it subsisted in the corporation, and the pauper is, by their permission, let into the enjoyment of it. I do not know that we are obliged to go into the title; certainly a corporation cannot demise except by deed, but we find the pauper in the occupation of the land by their permission, and this occupation must by fair intendment be taken to have been an exclusive one, for otherwise it would have been reduced to a thing of no value; the corporation could not have used the land without interfering with the pauper's right. The pauper seems to have been in the pernancy of the whole profits of the land; he took all which covered the surface of the land. It is, therefore, as much a tenement as *prima tonsura*. If the question turned upon the demise, I should feel difficulty; but I think that in point of pernancy and enjoyment, this must be considered as a tenement. — BAYLEY J. I think this was a tenement within the meaning of the act of parliament. The argument is, that it cannot be a tenement unless the pauper had a complete control over the land for all purposes, as well as for the purpose of taking sand and gravel; yet we find that *prima tonsura*, which is an interest confined to the surface of the land, has been considered to be a tenement. With respect to the objection for want of title, here has been an occupation. — ABBOTT J. I have had some doubts upon this case, but upon the whole, it seems to me, that what was done amounted to putting the pauper in possession of the soil; and I do not feel the objection to title, seeing that the pauper was in the enjoyment, and especially as this objection was not raised on the hearing of the appeal. — Order of Sessions confirmed.

Where a pauper, by order of a corporation made at a common hall, was allowed the liberty to take sand and gravel from the bed of a river (of which the corporation were entitled to the soil), for which liberty he paid to the corporation at the rate of 10*l. per annum*: Held, that he thereby acquired a settlement.

156. *Rex* v. *All Saints, Cambridge*, *M. T.* 3 *G.* 4. 1 *B. & C.* 23. — Two justices removed *L. F.* from the parish of the *Holy Trinity* to the parish of *All Saints, Cambridge*. The Sessions, on appeal, confirmed the order, subject, &c. The pauper's maiden settlement was in *All Saints' parish*. *In 1793* she married *W. F.*, a

Where a pauper resided for a year in a house in the parish of A., and during all that

time had two subsisting parol contracts for two ponds, or the rushes and flags growing therein, which he was to have the exclusive right of cutting at his pleasure: Held, that these were a sufficient tenement (being together above the value of 10*l.* *per annum*) to confer a settlement in A.

maker of chair bottoms and mats; and the question was, whether he had any legal settlement. The following were the circumstances as to that point. In 1807 he hired a house in the parish of *St. Peter's, Cambridge*, of the value of 9*l.* 10*s.* *per annum*, and resided therein with his family above a year; during the same time he had two separate parol contracts for two ponds, *or* for the rushes and flags growing therein, upon these terms: one of the ponds was of the extent of three acres, in which he was to have the exclusive right of cutting the rushes and flags at his pleasure, but not of draining off the water; the owner had the right to use the water, or to drain it off, as he thought proper. For this *W. F.* was to pay 5*s.* a year to the occupier of the farm in which it was situated. The pond was not fenced off from the rest of the field, and the occupier's cattle, when depasturing there, used the pond for drinking at; but the rushes and flags were not such herbs as cattle would eat. The other pond was only about a quarter of an acre, and was occupied under similar circumstances, at the yearly rent of 5*s.*, and two door-mats of the value of 2*s.* The next year *W. F.* agreed to pay 10*s.* for the same, but died before the rushes were all gathered. The contracts for the ponds subsisted during all the time that *W. F.* occupied the house in the parish of *St. Peter's*. The Sessions thought this was not sufficient to establish a settlement in that parish, and confirmed the original order. — PER CURIAM: There is no valid distinction between a lease of grass and one of rushes growing upon the land. This case is, therefore, similar to that of *Rex* v. *Stoke*. (*a*) If this had been a bargain for any thing in a state to be severed, as in *Warwick* v. *Bruce* (*b*), it would have been a personal contract; but here, the pauper's husband had a right to all the rushes which might grow in the ponds during the year. That gave him a continuing interest in the soil for the whole year; and by renting those ponds, together with the house in the parish of *St. Peter's*, he held a tenement of a greater value than 10*l.* *per annum*. It is found as a fact, that he resided in that house for more than a year; he therefore gained a settlement in that parish. The consequence is, that the pauper was improperly removed to the parish of *All Saints*; and that both the orders must be quashed. — Both orders quashed.

(*a*) *Ante*, pl. 136.

(*b*) 2 *M. & S.* 205.

The master of a charity-school, who was removable from his office at pleasure, resided for seven years, rent-free, in a house of the annual value of 10*l.*, where other parish schoolmasters had resided before. Part of the house he underlet to the parish at an annual

157. *Rex* v. *Lakenheath* (*c*), *E. T.* 4 *G.* 4. 1 *B. & C.* 531.—Upon an appeal against an order of two justices, whereby *H. B.*, his wife and family, were removed from the parish of *C.* to the parish of *L.*, the Court of Quarter Sessions confirmed the order, subject, &c. The pauper was settled by birth in the parish of *L.*, but he had resided the last seven years in *C.*, under the following circumstances: *E. R.*, Earl of *Orford*, by his will, dated the 2d *March* 1726, charged his manor of *C.*, and all his lands and hereditaments in *C.*, with the payment of a rent-charge of 20*l.* *per annum*, to be paid to the trustees therein named, their heirs and assigns for ever, upon trust to be by them paid yearly unto a person to be from time to time nominated by the person who, for the time being, should be entitled to the manor of *C.*, to officiate as a schoolmaster in the parish of *C.*, for the teaching of the children of the parish, for no other reward than the said anuual sum of 20*l.*, which was to be paid to the schoolmaster, without any allowance or de-

(*c*) See Rex *v.* Chediston, *post*, pl. 206.

duction for taxes or otherwise, with a proviso that the respective schoolmasters should, from time to time, be removable, and others, from time to time, made choice of and nominated in their room at the will and pleasure of the person, who, for the time being, should be entitled to the immediate possession of the manor of *C.* Upon the death of a former schoolmaster, about seven years ago, the pauper was appointed to the office. He resided at *C.* during the seven years, and until the present order (rent free), in the house wherein his predecessors, the schoolmasters, had resided before him, and he received, out of the rents of the *C.* manor and estates, the annual sum of 20*l.* The house and the garden attached to it were of the value of 10*l.* *per annum*, part of which he underlet, during the seven years to the parish, at the annual rent of 2*l.* 2*s.*—ABBOTT C. J. This case must be governed by the decision in *Bedworth* v. *Fillongley*. (*a*) There the pauper rented a house of the value of 8*l.* *per annum* and resided in it three years. With respect to that house there was no question; but about the same time that he took that house his brother gave him a close in an adjoining parish, containing about four acres, saying, "I'll give you a close to enjoy as long as I "please, and to take again when I please, and you shall pay nothing "for it." The Court held, that the occupation of the latter close was a coming to settle upon a tenement within the statute, and the two tenements being of the value of 10*l.* *per annum* that he gained a settlement. *Ashhurst* J. says, "If the party comes to reside "upon a tenement of 10*l.* a year, he cannot be removed, and then "he gains a settlement by 40 days' residence." And *Buller* J. considered that the pauper was a tenant at will. This is not like case of *Rex* v. *Cheshunt* (*b*), where the pauper occupied a servant. In such a case, the occupation is that of the master. Here it is found as a fact, that the pauper occupied a house and tenement, of the value of 10*l.* *per annum*, and it is clear that he occupied in his own right, for he actually underlet part to the parish. I am, therefore, of opinion, that the pauper gained a settlement in the parish of *C.*, and that the order of Sessions must be quashed. — BAYLEY J. The occupation of a tenement of the value of 10*l.* *per annum* for 40 days, although no rent be actually paid (*c*), is a coming to settle upon a tenement within the statute, so as to make the party irremovable. Here, indeed, the pauper might be considered to have given his services partly in consideration of his being permitted to reside in the house, and in that case, the services so rendered would be something in the nature of a rent. At all events, he came to occupy as a tenant at will with a view to a permanent residence, and that is a coming to settle upon a tenement within the meaning of the statute. — HOLROYD J. I think that the schoolmaster was tenant at will of this house. The legal possession of the house was in him, and not in the lord or receiver of the manor. In the case of master and servant, the servant may merely have the use of the house as servant, but in that case the possession is that of the master; but here the school master actually underlet a part of the house to the parish; he therefore enjoyed the house as his own, and not as the servant of the lord or receiver of the manor. That being so, I am of opinion that he gained a settlement in *C.*, and that the order of Sessions must be quashed. —Order of Sessions quashed.

rent: **Held, that this was a coming to settle upon a tenement of the value of 10*l.* *per annum* within the meaning of the 13 & 14 Car. 2., and that the pauper thereby gained a settlement.**

(*a*) *Post*, pl. 174.

(*b*) *Post*, pl. 187.

(*c*) But see now 6 G. 4. c. 57.

A pauper serving a farmer was to have the liberty to feed two cows on his master's farm during a year. They were fed during the summer in the pasture of his master, and in the winter in his straw yard, with hay grown upon his lands. It was found that the keep of the two cows during the summer months required land worth *5l. 5s.* annually, and to cut hay sufficient for the winter keep required land of the further annual value of *5l. 5s.*: Held, that the right to feed the two cows upon the pasture during the summer was the only part of the contract which gave any interest in the land, and that the pauper did not thereby gain a settlement, the Sessions having found the annual value of the pasture-feed to be less than 10*l.*

158. *Rex* v. *Sutton St. Edmund*(*a*), *E. T.* 4 *G.* 4. 1 *B. & C.* 536. — By an order of two justices, *S. W.*, his wife and son, were removed from the hamlet of *L.* to the hamlet of *S.* Upon appeal, the Sessions confirmed the order, subject, &c. The pauper *W.*, being settled at *S.*, and having been married several years, at *Lady-day*, 1793, agreed with *U.*, a farmer in *L.*, to serve him as a confined labourer in husbandry (that is, to work for him and no other person) for a year. The terms of the agreement made between the pauper and his master were as follows: The pauper was to have 18*l.* a year wages. His master was either to find him two cows, or the pauper was to be at liberty to provide himself with two, and feed them on his master's farm during the same year. The pauper went into the service of *U.* under the agreement at *Lady-day* 1793, and continued therein till *Lady-day* 1797, under contracts to the same effect. During the first three years of such servitude, the pauper lived in a house on his master's farm in *Wisbeach High Fen*, and the last year of such service in a cottage at *L.* The occupation of the cottage was incidental to the service of the pauper, who was discharged from it at the same time that he left his service. The pauper bought one cow, and his master found him another, both of which were fed during the summer in the pasture of his master, and in the winter were kept in the straw-yard of his master, and fed with hay grown upon the master's lands. The pauper had the exclusive use and advantage of such cows. If the pauper had not had such cows kept for him on his master's farm, he would have had more wages; and at the time he left *U.*'s service in 1797, he took his cow with him. Evidence was given to the Court, that the keep of the two cows during the summer months would require two acres and a half of land, on which they were fed; and that such acres were worth together annually *5l. 5s.*; and that to cut hay sufficient for the winter keep would require two acres and a half more of such land of the annual value of *5l. 5s.*; and that the summer feed and winter keep with hay for the two cows on such farm were of the annual value of 10*l.* 10*s.* The Court of Quarter Sessions were of opinion that the keeping and feeding of the cows under the above circumstances did not constitute such a tenement as gave the pauper a settlement at *L.*, and therefore confirmed the order of removal. — ABBOTT C. J. It has been settled in several cases that the liberty to take the profits of land by the mouths of cattle is a tenement within the meaning of the 13 & 14 *Car.* 2.; but the case of *Rex* v. *Oswald Twissell* (*b*) is an authority to show that the contract must apply to growing produce, and that a contract partly for growing produce and partly for hay is insufficient to give a settlement. The contract in this case is not very distinguishable from that in *Rex* v. *Minster* (*c*), although it is to be observed, however, that no question was raised in that case as to the manner in which the cattle were to be fed. The question was treated, both by the bar and the bench, as if they were to feed upon the growing produce, and that the pauper acquired a right to the profits of the land itself. *Le Blanc* J. says, "the "liberty of taking the profits out of land is found to be of a "greater value than 10*l.*" It was a point conceded in that case

(*b*) Mich. 1818.

(*c*) *Post*, pl. 182.

(*a*) See Rex v. Bardwell, *post*, pl. 160.; Rex v. Kenardington, *post*, pl. 230.

that the mode of feeding was sufficient to give a settlement. Here the distinction is pointed out, and according to the case of *Rex* v. *Oswell Twissell*, the contract must be to feed the cattle with the growing produce of the land. Now in this case the master was only bound by the terms of the contract to feed the cattle during the year upon the farm, according to the usual mode, that is, to feed them during the summer upon the pasture, and during the winter in the straw-yard. The summer keep upon the pasture is found to be of no greater value than *5l. 5s.*, and the winter keep, for the reasons already given, cannot be taken into consideration; and that being so, I am of opinion that the pauper did not gain any settlement in *L.* — BAYLEY J. The party, in order to gain a settlement, must come to settle upon a tenement of the yearly value of 10*l.* The right to take the herbage and produce of the soil is a right to the profits of the land, and constitutes a tenement; but the contract must be for taking the growing produce of the land. Now here it is stated that by the terms of the contract the pauper was to be at liberty to feed the cows on his master's farm during the year. By that contract the master would be bound to feed the cows during the whole year in the usual mode, viz. to feed them on the pastures during the summer, and in the straw-yard during the winter. The right to feed cattle for a period of the year when they are usually pasture-fed, by eating the growing produce of the land, is a tenement; but the right to feed cattle by dry food, not necessarily a part of the produce of any particular land, is not a tenement. That point was not taken in *Rex* v. *Minster*. *Rex* v. *Oswald Twissell* is an authority expressly to show that the value of the pasturage can alone be taken into consideration in estimating the value of the tenements occupied by a pauper under such a contract as this. Here the value of the pasturage alone amounted only to *5l. 5s.*, and, consequently, the pauper had not a tenement of the annual value of 10*l.* — HOLROYD J. I am of opinion that the pauper gained no settlement by this contract. Agreements for liberty to take the growing produce of land by the mouths of cattle have been equivalent to a demise of the land, at a rent equal to the profits of the land, and to constitute an incorporeal tenement. The party intitled to the privilege is considered for this purpose as the occupier of land of that value. The authorities establish that, where such a contract confers a right of pasturage of the annual value of 10*l.* a settlement is gained. But a contract to feed cattle with hay in a straw-yard gives no right to the occupation of the land from which the hay is cut. It is rather a personal contract for the sale of so much hay as shall be necessary for the sustenance of the cattle. Here, then, the pauper had an interest in that land alone on which his cows were depastured during the summer, and the annual value of that was *5l. 5s.*, and insufficient. For these reasons I am of opinion that the pauper did not gain any settlement in *L.* — Order of Sessions affirmed.

By one entire contract, a master agreed to give his servant 20*l.* a year, a cottage to live in, and

159. *Rex* v. *Cherry Willingham*, *E. T.* 4 *G.* 4. 1 *B. & C.* 626. — By an order of two justices, *B.*, his wife and children, were removed from the parish of *H.* to *C.* Upon appeal, the Sessions confirmed the order, subject, &c. The pauper, *B.*, had gained a settlement, by hiring and service, in the parish of *C.*, and was settled there at *May-day* 1817. The pauper then contracted

the agistment of one cow for his own services; and the sum of 28*l.* and the agistment of another cow in consideration of his lodging and maintaining in the cottage two of the master's labourers. The annual value of the lands on which the two cows were depastured exceeded 10*l.*, but the annual value of land sufficient to depasture one cow only would have been less than 10*l.*: Held, that the pauper gained a settlement by the right to agist the two cows.

to become the groundkeeper of *Hill*, in respect of his farm at *H.* The master, by one entire contract, agreed to give the pauper 20*l.* a year, a cottage to live in, and the agistment and whole profits of one cow for his own services, and the sum of 28*l.*, *and the agistment of and whole profits of another cow, in consideration of his* lodging and maintaining in the cottage two of his (*Hill's*) labourers. The pauper resided under these terms in *H.*, during the year, taking the whole profits of the cows, receiving his wages, the allowance of 28*l.*, and maintaining the two servants. The annual value of the lands on which the two cows were depastured, exceeded 10*l.*; but the land necessary for one cow only would not be of that value; (that is to say) the annual value of the agistment of two cows upon the land in question would be worth 10*l.* a year; but of one cow would not be 10*l.* a year. — ABBOTT C. J. now delivered the judgment of the Court. We have considered of this case, and we are of opinion that the pauper acquired a settlement in *H.*; and, consequently, that the order for his removal from that parish, and the order for confirmation are wrong, and that the rule for quashing them must be made absolute. The tenement in question is the pasturage of two cows. It is found that the annual value of the land whereon the two were depastured, exceeded 10*l.*; that the annual value of the agistment of the two would be worth 10*l.* but of one, then not 10*l.* It was, therefore, contended in support of the orders, that although the pasturage of one of the cows must be considered as a tenement upon the authority of decided cases, yet that the pasturage of the other was not a tenement, and this upon a difference in the terms of the contract as set forth in the case. It is found that the contract was an entire contract, that the master agreed to give the pauper 20*l.* a year, a cottage to live in, and the agistment and whole profits of one cow for his own services; and the sum of 28*l.*, and the agistment and whole profits of another cow, in consideration of the pauper's lodging and maintaining at the cottage two of the master's labourers. The question arose upon the cow thus last mentioned. Now, by the terms of this contract, the pauper does not engage to employ the milk of the latter cow in the maintenance of the labourers; he might, if milk formed a part of their diet, as it may be presumed to have done, have given the milk of the other cow, or he might have procured milk for them elsewhere, and might have sold or otherwise disposed of the milk of both the cows provided by his master. So that we cannot say the milk was given or appropriated for the maintenance of the labourers; but must say, that it was given in consideration of the maintenance of the labourers. And the consideration given or paid for a tenement is wholly immaterial in a question of settlement, if the yearly value be 10*l.* Whether the consideration be paid in money, or by services rendered, or by any other matter beneficial to the party receiving, was of no importance at the time in question, which was before the statute 59 *G.* 3. *c.* 50. We therefore think that the difference, as it was called, in the terms of this contract, does not lead to any legal distinction which can justify us in saying, that the agistment of the latter cow was not a tenement. — Both orders quashed.

The pauper was hired for a year

160. *Rex* v. *Bardwell* (*a*), *T. T.* 4 *G.* 4. 2 *B.* & *C.* 161. — Upon an appeal against an order of two justices, for the removal of *Fir-*

(*a*) See Rex *v.* Kenardington, *post*, pl. 230.

man from the parish of *B.* to *I.*, the order was quashed by the Sessions, subject, &c. About 24 years ago, the pauper, a married man, was hired for a year, by Mr. *S.*, of *I.*, as his shepherd; he was to have a house and garden rent free, 7*s.* a week, and the going of 30 sheep with his master's flock as wages. The pauper lived for two years with Mr. *S.*, in the parish of *I.*, at these wages, during all which time the 30 sheep went with his master's flock on the farm, the whole of which was situated in that parish. The feed of the 30 sheep was worth 16*l.* a year, exclusive of the house and garden. If the pauper had not been allowed to keep the sheep he must have had more wages. — BAYLEY J. This case certainly comes very near *Rex* v. *Minster* (*a*), but that is open to much observation. It was there conceded that the right to have the cows fed upon the master's farm was a tenement, and the only question discussed and decided was, the nature of the consideration given for that tenement. In *Rex* v. *Oswald Twissell*, decided in *Michaelmas* term 1818, it was held, that unless it was stipulated in the original bargain, that the cows should be pasture-fed, a settlement would not be gained, and that decision was recognized and acted upon in *Rex* v. *Sutton St. Edmund's*. (*b*) In the present case, it is probable, that the sheep were fed upon growing produce, to the value of 10*l.* *per annum*; but as it was not any part of the original bargain that they should be so fed, it falls expressly within those two cases, and is not sufficient to confer a settlement. There is another point also which makes it extremely doubtful whether the pauper could have gained a settlement, had the going of the sheep constituted a tenement of 10*l.* annual value. The house and garden being merely for the more convenient performance of the pauper's service as shepherd, must be laid out of consideration; he did not occupy them as a tenant, but as a servant. The statute 13 & 14 *Car.* 2. *c.* 12. requires that the party should come to *settle* on the tenement: now that means to reside. In all the cases determined on this part of the act the pauper resided upon some part of that which constituted the tenement. There are cases where a party, from kindness, was allowed to reside in a house, rent free, that was held to be a tenement. But here the pauper had no residence but in the character of a servant; the house continued the master's, and the pauper was, with respect to this point, in the same situation as if he had lived in a room in his master's house. The two cases referred to differ from this, for in each of them the pauper had property of his own in the parish, and was on that ground held to be irremoveable. *Rex* v. *Denbigh* (*c*), also, is distinguishable, for there the pauper lived in the toll-house, as his own residence; and it would have been such a tenement as would confer a settlement, but for an act of parliament which says, that no gatekeeper shall gain a settlement by renting the tolls and residing in the toll-house. (*d*) For these reasons I think that the pauper did not gain a settlement at *I.*, and that the order of Sessions must be confirmed. — BEST J. In *Rex* v. *Minster* the principal point was given up, viz. Whether the feeding of the cows constituted a tenement? but the Court there thought that a house occupied by the pauper, merely as a servant, did not constitute a tenement. Here there was not any agreement that the sheep should be fed on growing produce; this case, therefore, falls within *Rex* v. *Oswald Twissell*, and *Rex* v.

as a shepherd: he was to have a house and garden rent-free, 7*s.* a week, and the going of 30 sheep with his master's flock, as wages. He served for two years at those wages in the parish of *I.*, during all which time the sheep went on his master's farm, the whole of which was situated in that parish. The feed of the sheep was worth 16*l.* *per annum*: Held, that this did not confer a settlement, it not being any part of the bargain that the sheep should be pasture-fed. *Semble*, That in order to gain a settlement by renting a tenement, the pauper must reside upon some part of it.

(*a*) *Post*, pl. 182.

(*b*) *Ante*, pl. 158.

(*c*) *Ante*, pl. 148.

(*d*) 13 G. 3. c. 84. § 56.

Sutton St. Edmund's. I agree, also, that the pauper, to gain a settlement, must reside upon some part of the tenement. I am not, indeed, aware of any express decision to that effect; but looking at the words of the statute it appears, that merely having a tenement of a certain value will not do, the pauper must come to *settle* upon it. The legislature could not have intended mere residence as a servant, but that the party should gain credit and reside as a tenant. If that be so, the pauper, on this ground also, gained no settlement in *I.* — Order of Sessions confirmed.

A pauper was hired for a year, and had by agreement a house and garden, a rood of potatoe land, and the keep of a cow on his master's land. After the pauper had served 10 years, his cow falling in milk, the pauper had in lieu of the cow two heifers kept for him, through the kindness of his master, and not in consequence of any bargain. The potatoe land and the keep of two heifers was of the annual value of 10*l.*, but the potatoe land and the keep of the one cow was of less annual value than 10*l.*:
Held, that the pauper, by having the potatoe land and the keep of the two heifers, *before* the passing of the stat. 59 G. 3. c. 50., gained a settlement: but, *semble*, that by having the potatoe land and the keep of the two heifers after the passing of the 59 G. 3. c. 50., he would not have gained a settlement.

161. *Rex* v. *Benneworth* (*a*), *E. T.* 5 *G.* 4. 2 *B.* & *C.* 775. — Upon appeal against an order of two justices, whereby *J. F.*, his wife and family, were removed from the parish of *B.* to *C.*; the Sessions quashed the order, subject, &c. — In 1803, the pauper, *J. F.* (then a married man), was hired by yearly hiring as a confined labourer in husbandry with Mr. *D.* of *C.*, farmer. The pauper had, according to agreement, a house and garden, and a rood of potatoe land, and the keep of a cow on his master's land. The cow was instead of so much money for wages. The pauper remained in Mr. *D.*'s service 11 years, during which time, namely, in the year 1813, the pauper's cow failed in milk, on which account, through the kindness of his master, and not in consequence of *any bargain*, the pauper had, in the place of the former cow, two heifers kept for him by his master on his master's land for about 11 months. The potatoe land and keep of the two heifers, were together of the value of 10*l. per annum* and upwards. But the potatoe land and keep of one cow were below that value. On leaving Mr. *D.*, the pauper went to live as a confined labourer with Mr. *B.* at *S.*, with whom he remained five years. For the last three years of the pauper's service with Mr. *B.*, the pauper was relieved in *S.* by the parish of *D.* At the expiration of the pauper's service with Mr. *B.*, the parish of *D.* took him and his family to their parish, and put them into a cottage in the parish of *B.*, an adjoining parish, where they continued to relieve them till some time in the year 1822. The pauper then became chargeable to the parish of *B.* — ABBOTT C. J. now delivered the judgment of the Court. This case was argued before us in the course of the present term. We are all strongly impressed with the inconvenience of considering a settlement to be gained under circumstances like the present; and under that impression, we thought it right to consider the subject before we delivered our judgment. We have done so; but we find the law so firmly established, that a perception of the profits of land by the mouths of cattle, is a tenement, within the meaning of the stat. 13 & 14 *Car.* 2. *c.* 12., and that an occupation of a tenement of the yearly value of 10*l.* will give a settlement, whether the rent be paid in money or in labour; and even if the occupation be gratuitous and no rent paid; that we do not think ourselves at liberty to unsettle this doctrine; and, consequently, we are of opinion, that a settlement was gained in *C.*, and that the present rule must be made absolute. The inconvenience is retrospective only: the law, so far as it regards a case of this kind being altered by the stat. 59 *G.* 3. *c.* 50. So that no person need now abstain from such an act as is dis-

(*a*) See Rex *v.* Kenardington, *post*, pl. 230.

closed in this case, through the fear of bringing a burthen upon his parish. — Order of Sessions quashed.

A butcher agreed to occupy a stall in a market at 2*s.* 6*d.* *per* week. The stall was a permanent building, with a door capable of being locked, and the key was in his possession; but he had a right of access to the stall on two days in the week only. On other days the market was closed. The pauper used the stall on the market days for a period of 19 weeks, and paid rent for that time: Held, that he had occupied the stall for 38 days only, and therefore gained no settlement. *Semble*, that this was a coming to settle upon a tenement within the statute 13 & 14 Car. 2. c. 12. § 1.

162. *Rex* v. *Caversham*, *M. T.* 6 *G.* 4. 4 *B.* & *C.* 683. — Upon an appeal against an order of two justices whereby *Ann Dight*, wife of *John Dight*, a prisoner under confinement at *Reading* gaol, and their seven children, were removed from the parish of *St. Mary* in *Reading*, to the parish of *C.* The Sessions confirmed the order of removal, subject, &c. In the year 1817, the pauper's husband occupied a tenement in the parish of *C.*, of the yearly value of 9*l.* 19*s.*, paying rent after that rate, and upon which he resided three quarters of a year. During the time he so occupied this tenement he agreed, being a butcher by trade, with the collector of the tolls of *Reading* market, for the occupation of one of the several stalls in the market, for which he was to pay 2*s.* 6*d.* *per* week. The stall used by the pauper's husband under this agreement was like the others, a permanent building, furnished with a door capable of being locked, and the key was always in his possession, but he had a right of access to the stall only on *Wednesdays* and *Saturdays*, being market-days. At each extremity of the market are iron gates, which are closed and locked except on *Wednesdays* and *Saturdays*, and when locked preclude all access to the stalls, except by permission of the collector, which was occasionally granted to the pauper's husband. He continued to use the stall from the 1st of *November*, 1817, to the 14th *March*, 1818, paying the 2*s.* 6*d.* at the end of each week or fortnight, according to convenience, and occupying at the same time the tenement at *C.* The Sessions confirmed the order, subject to the opinion of this Court upon the question, Whether the renting and occupation of the stall in the manner and during the period aforesaid, was such a renting of a tenement for 40 days, as might be coupled with the other tenements of 9*l.* 19*s.* so as to confer a settlement in the parish of *C.*? — ABBOTT C. J. I am of opinion that, from the facts of the case, the pauper occupied this stall for 38 days only, and that, consequently, he did not gain any settlement. — BAYLEY J. I incline to think that there was a renting of a tenement within the statute of *Car.* 2. But I am clearly of opinion that the pauper occupied the stall for 38 days only, and that being so, no settlement was gained in *C.* — Order of Sessions quashed.

III. *Of the Species of Tenure.*

A house rented at 5*l.* a year of one landlord, and a piece of land of 6*l.* a year rented of another landlord is an *entire tenement* in the tenant, by which he may gain a settlement. S. C. Foley, 79. 1 Sess. Cas. 73. Sett. & Rem. 86.

163. *North Nibley* v. *Wootton-under-Edge*, *M. T.* 1 *G.* 1. *MSS.* — A man and his wife were removed from the parish of *North Nibley* to *Wootton-under-Edge*, where they rented the *Red Lion* at 6*l.* a year from *Lady-day* to *Lady-day*: about the end of the *May* following he took a meadow, which was of the yearly value of 8*l.*, near to the same house in the said parish from that time to *Lady-day* at 5*l.* 10*s.*, and about two months after the man ran away, but his wife and family continued there till they were removed to *North Nibley*. The order was confirmed at the Sessions. On motion to quash these orders, it was said, that this was a renting of a tenement of 10*l.* a year, and sufficient to gain a settlement in *Wootton-under-Edge*. — THE CHIEF JUSTICE: I do not see why this should not gain a settlement, for he rented a house of 6*l.* a

year, and land at 5*l.* 10*s.* a year, which does gain a settlement; and he might have come again if you had not sent away his wife and family. Indeed, had he taken the meadow but for a month, I think he would not have gained a settlement, though he paid a rent proportionable to the whole year; for then it would have appeared that he was not thought of sufficient ability to be trusted with it for a whole year. — The other Judges said, this was a renting of a tenement of 10*l.* *per annum* within the meaning of the statute, and that the settlement arose from *the value* of the lands and tenements that he rented; for by reason of that he was not likely to become chargeable. — Both orders quashed.

An *entire tenement* of 10*l.* a year, though lying in different parishes, will gain the tenant a settlement in that parish in which *the house* stands. S. C. Foley, 81. 1 Sess. Cas. 115. 10 Mod. 388. Sett. & Rem. 78. pl. 103.

164. *South Sydenham* v. *Lamerton*, *T. T.* 3 *G.* 1. 1 *Str.* 57. — About 27 years since the mother-in-law of the pauper died, and he entered into a term of years in *S.* in the right of his wife, and lived upon it two years, but never took out administration to the mother: at the end of two years he removed to *L.* and took a lease for 99 years, determinable upon three lives, at the yearly rent of 7*l.* 10*s.* whereof 4*l.* 10*s.* lay in *S.*, and the residue, and also the messuage, in *L.*, where he lived for 25 years: the premises were of the yearly value of 13*l.*, but in regard 7*l.* 10*s.* rent only was reserved, and 4*l.* 10*s.* of that lay in *S.*, and he had formerly lived there two years, the justices adjudged the settlement to be there.—PARKER C. J. The quantity of the rent is not material, but the value of the land. A tenant often pays a fine, and thereby lowers the rent, and yet the land is of equal value. And if a man should out of kindness settle another in a tenement of 10*l.* *per annum* value reserving no rent, yet that will not alter the case. The only difficulty is, that there is not in this case 10*l.* *per annum* in one single parish. As to that I am of opiuion, that if such a person as this should take a tenement of 8*l.* *per annum* in one parish, and another of 3*l.* *per annum* in a different parish, that would not gain him a settlement in either; but if the tenement be entire, and the house in one parish, as this case is, and part of the land in another, yet this may properly be called a tenement of 10*l.* *per annum* in that parish where the house is. The law presumes that a person capable to be entrusted with the management of 10*l.* *per annum* is not likely to become chargeable, but is able to maintain himself. Two distinct tenements in two parishes, making together 10*l.* *per annum*, will give no settlement. But *it seems* to me to be otherwise where the tenement is entire. — EYRE and PRATT Js. accordant. — PER CURIAM: The settlement is at *L.*, and therefore the order of removal to *S.* must be quashed.

But see Rex v. Sandwich, *post*, pl. 167.

An entire tenement of house and lands of the value of 12*l.* a year lying in different parishes will gain a settlement, although there is not so much of it in either parish as amounts to 10*l.* a year. S. C. Str. 849. 2 Sess. Cas. 159.

165. *Elsted* v. *Hollibourne*, *M. T.* 3 *G.* 2. EDITOR'S *MSS.* — Two justices removed *A. B.*, his wife and children, from the parish of *H.* to the parish of *E.* The Sessions upon appeal confirmed the order, and stated, That upon the examination of several witnesses upon oath, it appears to this Court that the said *A. B.* rented a tenement, consisting of a farm-house and lands, of 12*l.* 10*s.* a year, and had ability to purchase a competent stock for a farm of that value, and had paid his rent for the same for two years; that the farm-house and lands lay contiguous to each other, and had been usually letten together and occupied by the same tenant; but that the farm-house in which the said *A. B.* lived, and so many acres of land as amounted to 9*l.* 10*s.* a year, lay in the parish of *E.*, and as many acres of land as amounted to

3*l.* a year lay in the parish of *Seal*, in the same county. — These orders being removed into the Court of King's Bench, LORD RAYMOND C. J. seemed to think that he should rent a tenement of 10*l.* a year all in the same parish; for the words of the statute are positive, "*in such parish.*" A rule however to show cause was granted; and, on the argument, the case of *St. John's, Hertford*, v. *Amwell* (*a*) was relied on. And MARSH, who was counsel in that case, said, that the Court determined, on the authority of *South Sydenham* v. *Lamerton* (*b*), that a settlement was gained in the parish where the party resided. — THE COURT, in the present case, held to be a good settlement in *E.*; and the orders were affirmed.

(*a*) 1 Str. 529.

(*b*) *Ante*, pl. 164.

166. *Rex* v. *Stapleford*, *E. T.* 4 *G.* 2. EDITOR'S *MSS.* — Two justices removed *A. B.* the widow of *D. B.*, and her children, from the parish of *M.* to the adjoining parish of *S.* The Sessions, on appeal, quashed the order of two justices, and stated the case specially, viz. That in the year 1727 *D. B.* came into the parish of *M.* under *a certificate*, and there took *a lease* of a tenement of 3*l.* a year, in which he continued to live until the time of his death, and in which his family, the present paupers, also continued afterwards to live until the time of their removal. The said *D. B.* also *rented*, during the time that he lived in the said tenement, lands of 43*l.* a year, at a place called *Lazars*, which is *a vill* in the said parish of *M.*, and which *vill* provides for its own poor, as if it were a separate and independent parish. On these orders being removed into the Court of King's Bench, REEVE took an exception to the order of Sessions, because the renting was in different places, which would not satisfy the certificate act of the 9 & 10 *W.* 3. *c.* 30. § 11. To this exception it was answered, that by the cases of *St. John, Hertford*, v. *Amwell* it was settled, that the whole taking need not be in one parish. — THE COURT held that the certificate-man by this tenement gained a settlement in *Melton*, where he *lived* and rented the 3*l.* a year, for that this was a *bona fide* taking of the lease of a tenement of 10*l.* a year within 3 *W.* & *M. c.* 11. — The order of Sessions was therefore quashed.

3*l.* a year in the certificate parish, and 40*l.* a year in the adjoining parish, will avoid a certificate. S. C. 1 Sess. Cas. p. 414 case 328. S. P. St. John's v. Amwell, 1 Str. 529.

167. *Rex* v. *Sandwich*, *T. T.* 8 & 9 *G.* 2. *Burr. S. C.* 44. — *J. P.* the husband of the woman, and father of the children removed, was born at *Corfe Castle*; after he came of age he rented a tenement of 15*l.* a year in *Sandwich*, for a year and upwards; when his lease and time for which he took the said tenement were expired, he left the same and went into the parish of *Studland*, and took and rented a house in the said parish of *Studland*, at the yearly rent of 30*s.*; after he had lived in the said house about two years, he took and rented a tenement or lands in *Langton* of the yearly value of 12*l.*, on which there was no house, and occupied it two years; and inhabited in and rented also during all the time the said house in *Studland*. — LORD HARDWICKE: I took it that this matter had been very fully settled, that whether the taking was distinct or entire, or in one parish or in two, it is the same thing. Indeed the words of the act are, "coming to "settle as aforesaid in any tenement under the yearly value of "10*l.*" But the intention of this act is, that if a person be of sufficient ability to occupy a farm or tenement of the value of 10*l.* a year, it shall exclude the presumption of his being likely to be chargeable to the parish. — MR. JUSTICE PAGE: A man is not

A house rented at 30*s.* a year in one parish, and lands taken at a different time in another parish of 12*l.* a year, will gain the tenant a settlement in the parish in which the tenant resides.

a better man for renting one 10*l.* *per annum* than two fives; and he contributes to the poor for the whole 10 somewhere or other. From the nature of the thing and the reason of the cases, a man that is able to rent and does rent 10*l.* a year shall be settled in the parish where he lives. — MR. JUSTICE PROBYN: I remember it was made a question, Whether two distinct tenements taken at different times, when neither of them alone amounted to 10*l.* a year in value, should make a settlement? But it has been settled since that it does. However, here the second taking is a taking of an entire tenement of above 10*l.* a year on an entire contract with one person; and it has been long established, that where a person living in one parish rents an entire tenement of above 10*l.* a year in that or in any other parish, it gains him a settlement in the parish where he lives. — MR. JUSTICE LEE: I think my Brother PROBYN has fully answered the objection as to the entirety of the tenements; so that this objection may be laid out of the case: and then the reason of the cases upon this head has constantly gone upon the sufficiency of a person able to rent a tenement of such a value. The act of parliament has not fixed it to be a tenement in the same parish; and the man's ability is the same whether the contract be made with one person or with more. This I take to be the constant determination upon cases of this sort. However, as the last taking was of an entire tenement of above the value of 10*l.* a year, it stands free from the objection, that this is not an entire contract.

A farm of 52*l.* a year, rented, occupied, and managed jointly by two tenants, is a tenement of sufficient value to each of them. See Rex *v.* Seamer, *post*, pl. 176.

168. *Little Tew* v. *Duns Tew*, *T. T.* 29 & 30 *G.* 2. *Burr. S. C.* 398. — *Richard Guffkyns*, the pauper, was born in *Sandford*, and afterwards, together with *John Goodwin*, his father-in-law, rented a bargain at *Duns Tew* at 81*l.* a year as partners, and lived there 12 years; in 1747, they being about to leave *Duns Tew*, *John Goodwin* alone went to Mr. *Keck*'s agent at *Little Tew*, and took a farm of 52*l.* a year for four years; after such taking, and before the farm was entered upon, *Guffkyns* inquired of *Goodwyn*, Whether he depended upon his going with him to *Little Tew*? to which *Goodwyn* replied, that he did; for he could not go without him: *Goodwin* and *Guffkyns* removed from *Duns Tew* to *Little Tew*, with their whole joint stock to the value of more than 100*l.*, and managed the farm together for seven years, both of them residing thereon: Mr. *Keck* gave his receipts for rent to *Goodwin* only; and once, when Mr. *Keck* was obliged to distrain, the distress was made upon the stock which Mr. *Keck* supposed to be *Goodwin*'s only; and *Goodwin* alone gave a bill of sale of the stock; and *Guffkyns* then stood by without interposing. At the expiration of seven years, just before the order of removal was made, *Guffkyns* went off from the farm, and *Goodwin* took the whole stock, allowing *Guffkyns*, 62*l.* for his moiety thereof. — MR. JUSTICE DENNISON delivered the opinion of the Court: We are all of us of opinion that *Guffkyns* gained a settlement in *Little Tew*; for we consider him (being taken in partner by *Goodwin*) as having an interest at least as a tenant at will to *Goodwin*, of the moiety of a farm worth 52*l.* *per annum* for the whole of it, and, consequently, his moiety above 10*l.* *per annum*. A tenancy at will is sufficient to gain a settlement; so it was determined in *Cranley and St. Mary's, Guildford*. (*a*) The reason of that case will govern this; for there a certificate-man agreed with the lessee of a mill,

(*a*) 1 Str. 502.

that he should occupy the mill and pay 12*l. per annum*, and there was no under-lease or assignment; but in pursuance of that agreement the certificate-man occupied the mill two years together, and paid the rent; and it was holden, that if this was not an absolute lease for a year, as MR. JUSTICE EYRE said it was, the rent being reserved as the rent for a year, yet it was undoubtedly a lease at will, which is sufficient to gain a settlement: therefore we are of opinion, that *Guffkyns* is within the 13 & 14 *Car.* 2 *c.*12. and that he gained a settlement at *Little Tew.*

A house taken for a year at the rent of 3*l.* 10*s.* in one parish, and another house taken for a year at 9*l.* a year in another parish, give the tenant a settlement in that parish where he lived the last 40 days, although he had tendered the key of the first house to the landlord, and he had refused to accept of it.

169. *St. Lawrence* v. *St. Maurice*, *E. T.* 8 *G.* 3. *Burr. S. C.* 588. — *R. G.*, deceased, the husband and father of the paupers, rented a tenement of one *H. W.*, in the parish of *H.*, for a year, from *Lady-day* 1766, at 3*l.* 10*s.* a year; but resided therein five or six weeks only, and then quitted it; *R. G.* tendered the key of the tenement to *W.*, which he refused to accept: *G.* thereupon left it with a neighbour before *Midsummer-day* then next, for *W.* to take it when he thought proper: on the said *Midsummer-day G.* took a tenement in the parish of *St. M.*, at the rent of 9*l.* a year, and on the same day entered into possession thereof, and resided thereon above 40 days before the key of the tenement in *H.* was received by *W.*; who did not receive it till the 16th of *August* following: *W.* let the same to one *J. T.*, before *Michaelmas-day* 1766, and *T.* was to enter into possession thereof on the said *Michaelmas-day.* — LORD MANSFIELD: Here is a contract for a year in *H.* not dissolved, nor could it be dissolved. The landlord refused to accept the key; and he did not receive it at last till the middle of *August*, which was subsequent to the hiring of the second tenement. — MR. JUSTICE YEATES: It is clear that he held both tenements together: the former contract was not at an end: the landlord might have brought his action for the rent. — MR. JUSTICE ASTON and MR. JUSTICE WILLES were of the same opinion, that the former contract was not dissolved.

A house of 6*l.* a year rented of one man, and a stable at 2*l.* 10*s.* a quarter of another man, is an *entire tenement*, and gains a settlement, although he is not rated for the stable.

S. C. Burr. Set. Cases, 677.

170. *Rex* v. *St. Margaret, Fish Street*, *H. T.* 11 *G.* 3. *MSS.* — *S.* residing in *Clapham*, at his own house, contracted and employed the pauper's father to supply him with a pair of coach-horses for a quarter of a year, at 22*l.*; and the pauper's father contracted with the said *S.* for a stable belonging to the said *S.*, and was to pay 2*l.* 10*s.* a quarter for it; and the said *S.* reserved a separate stable for his own use. This contract was performed between the parties for two years and upwards. About the latter end of the fourth or fifth quarter, *S.* threatened to discharge him, but on the importunity of his friends, he agreed that he should continue to furnish him with the pair of horses; and that *S.* should pay him only 20*l.* a quarter, and have the like quarterly allowance for the use of his stables as before. Under and in pursuance of *this* contract, they agreed and acted for several years, until the pauper's father died, who, during the whole of the time, rented and lived in a tenement of 6*l.* a year in *Clapham*, but he was never rated either for his house or the stables. The justices removed the pauper from *Clapham* to *St. M.*, and the Sessions confirmed the order. In support of this removal it was contended, that this was not an independent contract for the stables, but a mere deduction from the price of the job-horses on account of their standing in *S.*'s own stables, and that no rent would be payable when the job was at an end. But THE COURT, after taking time to consider, thought the

agreement, though awkwardly pursued, was a contract for the stable. — MR. J. ASTON: There can be no doubt but it is a good renting. Suppose the master had paid the servant his whole wages, might not he have brought an action for the occupation and use of the stable?

A house with three acres and two roods of land at 9*l.* a year in one parish, and a cottage in another parish of 30*s.* a year, held in right of the pauper's wife, will gain a settlement in that parish where he resided the last 40 days. S. C. Burr. Set. Cas. 744.

171. *Rex* v. *Donington*, *E. T.* 13 *G.* 3. EDITOR'*s MSS.* — *T. S.*, being legally settled in *D.*, hired a house, and three acres and two roods of land, at the yearly rent of 9*l.*; which he occupied and paid rent for for several years, from *Lady-day* to *Lady-day*. During that time he married *Jane* the widow of *D. W.*, of the parish of *Wyberton*, who resided therein in a cottage, purchased by *W.* for 5*l.*, and might be of the value of 1*l.* 10*s.* *per annum*: about a fortnight after his marriage, he went and resided with his wife in the cottage in *Wyberton*, but kept the key of the house in *D.* till *Lady-day* following. At the time he left *D.*, all his effects were sold by his landlord in *D.*; but he satisfied his landlord for the rent that was to become due at *Lady-day* following, and kept possession of the premises in *D.* till *Lady-day* following; but he never resided in *D.* after he first left it in *September*, nor ever kept any stock or effects on the premises whatever. The land belonging to the house was half-year land, and common to the inhabitants of *D.* from *Michaelmas* to *Lady-day*, except about two roods which the landlord took possession of at *Michaelmas*, and abated 10*s.* in the rent for the same. *Jane*, the relict of *D. W.*, never administered to her husband, and had not been admitted tenant, or ever paid any rent for the premises in *Wyberton*. The Session was of opinion, that *S.*, the pauper, could not derive any benefit under the mere possession which his wife had in the premises, especially as he appeared to be only a casual occupant therein, and therefore they confirmed the order of two justices removing him from *Wyberton* to *D.* But after a rule had been obtained to show cause why these orders should not be quashed, the rule was, on the motion of HILL, made absolute without defence.

A *house* and *land*, the one of 3*l.* a year, the other of 8*l.* a year, in the same parish, taken at different times, and of different landlords, form an *entire tenement*, and will gain a settlement to *the person* so taking it although he afterwards occupy the same *jointly* with another person.

172. *Awre* v. *Newnham*, *T. T.* 13 *G.* 3. *Burr. S. C.* 756. — *H. D.* and one *R. M.*, his wife's father, *jointly* rented, stocked, and occupied an estate at *N.*, of 80*l.* a year, for three years. *R. M.* dying about the end of that time, *H. D.* soon afterwards took a house alone of one *R. W.*, of the parish of *A.*, at the yearly rent of 3*l.*; and another estate, consisting of lands, of one *J. S.*, of *A.*, at the yearly rent of 8*l.* *R. M.* leaving a widow, and she and *H. D.* being, upon the death of *R. M.*, jointly possessed of the remainder of the stock which had been on the estate at *N.*, they, the said *H. D.* and the said widow, went and lived at the said house at *A.*; and jointly occupied that house and the said estate of 8*l.* a year for one year; the stock on the said house and estate being partly the property of *H. D.*, and the other part the property of the widow; and sometimes one of them sold some part of the stock, and received the money for the same; and at other times the other of them sold other parts of the stock, and received the money for the same. At the time of taking the said tenements by *D.*, neither *R. W.* nor *J. S.* knew of any connection subsisting between *H. D.* and *E. M.*: a moiety of the stock was more than sufficient to stock the said house and farm; *D.* only was personally responsible for the rent. — THE COURT was thoroughly satisfied that the settlement was in *A.*—MR. JUSTICE

ASTON observed, that if two persons jointly take a tenement of less annual value than 20*l.*, it is clear that this will not gain a settlement to either of them. But a man who takes more than 10*l.* in yearly value, may let part of it to undertenants; and this will not destroy his settlement, though it will not gain one to such undertenants, who pay him less than 10*l.* a year. This was determined in the case of *Llandverras.* (*a*) This woman, the widow *M.*, was in the nature of an undertenant to the pauper. The pauper had the credit of taking the tenement; he alone took the house, and likewise the lands. Neither of the landlords knew of any connection between the widow and him; and he only was personally responsible for the rent. They were not partners in taking the tenement, though they were joint occupiers of it. She would gain no settlement by merely being a joint occupier, without having been concerned in taking it: nor shall the person who alone took it lose his settlement by letting in a joint occupier.

(*a*) Burr. S. C. 572, 573.

A man who, being insolvent, conveys his estate to trustees for the payment of his debts, but afterwards and before the trusts are performed, gets fraudulently into possession of the estate, does not gain a settlement by residing thereon for 40 days.

173. *Rex* v. *St. Michael's, in Bath, E. T.* 21 *G.* 3. *Dougl.* 630. — The pauper *J. F.*, being entitled to two freehold houses in *W.*, one of the value of 28*l.* a year, the other of 26*l.* a year, in 1778 conveyed them by lease and release to trustees in trust to be sold, and the money arising from the sale to be paid, first in discharge of two mortgages due thereon amounting to 500*l.*, afterwards to his other creditors rateably, and the surplus, if any, to him, his executors, administrators, and assigns. The houses were both let to other persons at the time of the conveyance, and the pauper then resided in a public-house in the parish of *St. M.*, at the rent of 40*l. per annum*, which he had occupied several years, till he failed; afterwards, one of the houses becoming vacant, the trustees having the possession and the key thereof, employed one *Betty Farrant*, then a lodger in the pauper's house, to clean the said vacant house, and paid her 3*s.* for so doing, and delivered her the key for that purpose; which having done, she placed the key in the bar of the public-house, among some other things of her own which she kept there, intending afterwards to redeliver it to the trustees, but the pauper's wife took it from thence, and took possession of the vacant house, and, with her husband, continued there to the time of the removal, being in the whole one year and three quarters: one of the trustees seeing her carrying her goods thither, gave her notice that she was doing wrong, not having the consent of either the trustees or creditors; to which she replied, "I am going to my own estate, for I and the "children can't lie in the street." The premises had not yet been sold by the trustees; the value whereof was about 650*l.* at present, but at the time of the conveyance was something more; the debts owing by the pauper, for which such trust-deed was executed, including the two mortgages, were 881*l.* and upwards; it did not appear on that deed how the annual rents were to be disposed of till the same should be made.—LORD MANSFIELD: If the estate on which a pauper resides is substantially his property, *that* is sufficient, whatever forms of conveyance there may be; and therefore a mortgagor in possession gains a settlement, because the mortgagee, notwithstanding the form, has but a chattel, and the mortgage is only a security. It is an affront to common sense to say the mortgagor is not the real owner. But here, what interest had the pauper in this estate? He made an immediate

conveyance to trustees, not a mortgage, to sell and pay off two mortgages and other debts; and when this conveyance was made, it was so doubtful whether there would be any surplus, that the deed says that he shall have the surplus, *if any*. He had only a chance of a residue, and had not a right to continue a moment in possession. A mortgagor has a right to the possession till the mortgagee brings an ejectment; and after the mortgagee had got into possession *he* might gain a settlement. There is still another and a stronger ground in this case, for the possession was gained by fraud.—The rest of THE COURT concurred in opinion with his Lordship, and held that the pauper's settlement was in *St. M.*

Two farms in different parishes held of different landlords, the one at 8*l.* a year, the other at 2*l.* 10*s.* a year, is a tenement of 10*l.* a year, although the farm of 2*l.* 10*s.* was given to the pauper rent-free and out of charity. S. C. Cald. 569.

174. *Bedworth* v. *Fillongley* (*a*), *M. T.* 27 *G.* 3. 1 *T. R.* 458. — *J. W.* rented a farm of 40*l.* a year in the parish of *F.*, and about *Lady-day* 1783, being distrained upon for rent, he left the farm, and came to the parish of *B.* with two cows and three sheep, purchased for him by his brother out of the said distress. About the said *Lady-day* 1783, *J. W.* took a house and three closes of land of the yearly rent of 8*l.* in the parish of *B.*, and lived in the said house, and resided on the same for about three years, during which time the rent was paid as follows; to wit, the first half-year by *J. W.*, the next half-year by the parish of *F.*, the third half-year by *J. W.*, and the fourth by a distress. About *Lady-day* 1783, *T. W.*, in a conversation with his brother *J.* concerning his family and poverty, said, "I am sorry for your family, and there-"fore I'll give you a close in the parish of *A.* (an adjoining parish "to the parish of *B.*), containing about four acres, to enjoy as "long as I please, and to take again when I please, and you shall "pay nothing for it." *J. W.* enjoyed the said close, which was of the yearly value of 2*l.* 10*s.*, for three years, during which time *T.* his brother paid not only the land-tax, but was taxed and paid the poor's rates for the same. All the tillage was done by the horses and servants of *T. W.*, at whose expence and by whose servants the harvest was got in. During one year the said *J. W.* so enjoyed the said close, part thereof was sown with the wheat of the said *J. W.*, procured by the gleanings of his children and family; and in the last year the said part of the said *close was sown with corn of* T. W., *at whose expence the crops of the said corn were drawn to and delivered at the house of* J. W., in the parish of *B.* During the said three years the cattle of *T.* were never put into the said close, except for the purpose of ploughing and sowing the land, and gathering the crops; but the cattle of *J. W.* were upon the close during the time he so enjoyed the same.—ASHHURST J. In all cases upon settlement law, it is the safest way to adhere to the *words* of the act; for if we once depart from that line, it leads to endless uncertainty. The act does not say any thing about *ability*. That is not the *criterion*. And if the party come to reside upon a tenement of 10*l.* a year he cannot be removed, and then he gains a settlement by 40 days' residence. But if ability, or rather confidence, were to be taken into consideration, according to the case reported in *Strange*, if a man has sufficient credit and confidence reposed in him by another, as to be trusted with a tenement of 10*l.* a year value, even out of charity, that is sufficient to answer the intent of the statute, because such an one is not

(*a*) And see Rex *v.* Lakenheath, *ante*, pl. 157; Rex *v.* Chediston, *post*, pl. 192.

likely to become chargeable. Therefore neither upon the words nor upon the meaning of the act was this man removable, and so he gained a settlement. — BULLER J. This is the first case which has come directly before the Court for a construction on this part of the statute. I have no difficulty on this point, because I have often given it as my opinion that the safest and wisest way in all questions relative to settlements is to adhere to the letter of the law. As to the question of *ability*, it seems to me that this idea is founded chiefly on the words of *South Sydenham* v. *Lamerton*. (*a*) But the words, if attentively considered, will not warrant the construction put upon them; for the credit which he has is only for the rent which he is to pay, but that is only as between him and the landlord, the credit is given by the landlord. Lord Chief Justice *Parker* first says, "If a man hire a house at a small rent, "and pay a fine, yet if the house is worth 10*l*. *per annum* it makes "a settlement, for the settlement depends on the *value* of the "tenement, not on the *rent*." Then indeed he uses these words: "The reason of the statute is this; that a man who is entrusted "with a tenement worth 10*l*. a year, is of such credit, and must "have such a stock, as makes him not likely to become charge-"able to the parish." *Eyre* J. "took it to be within the "letter and intent of the law, that a man who is capable of rent-"ing a tenement of 10*l*. a year should be settled in that parish." It is clear that they applied this reasoning to the persons mentioned in the former part of the act, to show that that case did not come within the description. And this is put out of doubt by what *Pratt* J. says: "The mischief recited by the statute, "and intended to be prevented, is, *vagrancy of poor persons*, who "used to come into parishes where there was the best stock; and "the statute describes who are intended by those poor, *to wit*, "*such persons as are not capable of hiring a tenement of* 10*l*. "*a year*." Now it is material to consider, what was the case on which the Court were then speaking. They were speaking of a case where the taking was of *more* than 10*l*. *per annum*, therefore these expressions only relate to cases of above 10*l*. *per annum*. The words of the Court are to be applied to the case then before them, and are not applicable to any case where the renting is not more than 10*l*. *per annum*. This is more decisive, on account of what is said in the conclusion of the case; where, describing the poor persons whom the act intended to exclude from gaining settlements, *Pratt* J. says, "such persons as are not capable of "hiring a tenement of 10*l*. a year." There are no such words in the act of parliament; but if we have recourse to the preamble, it speaks of rogues and vagrants, and persons who are burthensome to the parish. These, therefore, are the persons of whom the statute speaks as likely to become chargeable; and therefore the expressions in that case are only to be considered as *particular instances of persons*, who, from their situation in life, *were not likely to fall* within the description of persons in the preamble of the act; but one who is settled on a tenement of 10*l*. a year is not within the act. Then it has been contended that the pauper never had the tenement; but it is impossible for us to say so, after the justices have stated that he had it under an agreement, which made him tenant at will. For what is to become of the estate after he had sown it with corn? Its being gained by gleaning is

(*a*) *Ante*, pl. 164.

not material; for suppose he had stolen it, it would have been just the same, he would have been entitled to the growing crop. He was then in possession of a tenement of 10*l.* a year, and could not have been turned out by his brother; therefore this is a sufficient taking of a tenement within the statute.

A occupied a tenement of 10*l.* a year, and died leaving three children, to two of whom he bequeathed 5*s.* each, and to the latter, whom he made executrix, the residue of his property. The pauper, who had before married the executrix, resided on the tenement above 40 days, and paid rent for it: this was held to gain him a settlement, though the wife never proved the will.

175. *Rex* v. *Netherseal*, *E. T.* 31 *G.* 3. 4 *T. R.* 258. — The pauper, *T. T.*, being settled at *N.* by hiring and service, married the daughter of *J. S.* of *F.*, who rented and lived upon a tenement in *F.*, of the yearly value of 11*l.*; part of which, of the yearly value of 6*l.*, was rented of one *S.*, and the other part, of the yearly value of 5*l.*, of Mr. *G.* The pauper and his wife continued to live in the family of *S.* until his death, which happened about two years after the pauper's marriage. *S.* made a will, and, after bequeathing to his son *J. S.* and an unmarried daughter 5*s.* each, gave the pauper's wife all the rest of his property and stock upon his tenement, of the value of upwards of 40*l.*, and appointed her executrix of his will. The pauper possessed himself of this property, and paid his brother and sister-in-law their said legacies about a year after *S.*'s death. The pauper's children got the will out of a box which was left unlocked, and tore it to pieces. The pauper never proved the will on account of the expence, but continued with his wife, the executrix, to occupy the tenement in *F.*, from the decease of *S.* which happened on the 9th of *November* 1774, until the *Lady-day* following, and paid the rent for the same. At the *Michaelmas* preceding the death of *S.* he had a notice from *Sims* to quit his part of the tenement at the then next *Lady-day*, which the pauper did, and took again a part of it at the yearly value of 8*l.* 3*s.* — LORD KENYON C. J. If the question depended on the title which the pauper claimed under the will in right of his wife, I think that the facts stated in this case would not warrant us in deciding that they could enforce any right under the supposed will, because the fact of there being a will should have been proved in a different manner. We cannot receive any other evidence of there being a will in this case, than such as would be sufficient in all other cases where titles are derived under a will; and nothing but the probate, or letters of administration with the will annexed, are legal evidence of the will in all questions respecting personalty. But on the other point I cannot bring my mind to doubt. It is stated, that the pauper resided for more than 40 days on a tenement of more than the yearly value of 10*l.*, for which he paid rent. Then it was said, that he might have been turned out of possession by some other person having a superior right; but it was not suggested who had any better title: and the landlord, who received the rent, could not turn him out. — ASHHURST J. In order to acquire a settlement by taking a tenement of 10*l.* a year, it is not absolutely necessary that there should be an express contract for the tenement; it is sufficient if the tenant reside 40 days on a tenement of such a value with the permission and consent of the landlord: for in such case the law implies a contract. — BULLER J. Supposing there were no will in this case, the only persons entitled to the property of the pauper's wife's father were the pauper's wife and her brother and sister; and if it were necessary to go beyond the implied contract between the landlord and the pauper, here is sufficient evidence to show that all the parties interested consented

to the pauper's continuing in possession of these premises; for the other son and daughter received 5*s.* each in lieu of all their right and claim to their father's property. Therefore all the parties interested agreed to this occupation by the pauper; and consequently there is no pretence to say, that this was a holding by wrong. — GROSE J. declared himself of the same opinion.

The joint occupation of a farm of 120*l.* a year, although one of the partners only is the tenant to the landlord, is a tenement of sufficient value to each.

176. *Rex* v. *Seamer*, *H. T.* 36 *G.* 3. 6 *T. R.* 554. — "*T. Yates* "took a farm of Sir *C. S.*, at *E. H.*, at the rent of 176*l.* a year. "*J. Y.* his brother resided with him upon the farm, the two brothers "having agreed to be joint partners in the stock and farm previous "to *T.* taking it, but *J.* did not consider himself as tenant to Sir "*C. S.* *J.* advanced 120*l.* towards the stock and farm. *T.* was "the only person rated in the parish rates, though *J.* said he con- "ceived himself answerable for the payment of his part and to pay "interest accordingly. After about seven months the two brothers "parted; there was no account of receipts and disbursements. "Upon parting it was agreed that *J.* was to allow 20*l.* out of what "he had advanced, and to be repaid the remainder, which took "place." — THE COURT were of opinion that this case was governed by that of *Rex* v. *Duns Tew*. (*a*) — LORD KENYON C. J. said, that whether the pauper were considered as a joint-tenant with his brother, or as under-tenant, he equally gained a settlement in *E. H.*

(*a*) *Ante*, pl. 168.

A cottage of the value of 30*s.* a year, which a pauper resides in under pretence of purchasing, and land in another parish of 10*l.* a year, which he entered on at his father's death, will give a settlement in the parish where the cottage is situated.

177. *Rex* v. *Culmstock*, *T. T.* 36 *G.* 3. 6 *T. R.* 730. — The pauper was settled by birth in *C.*, where he resided with his parents till he was 25 years of age, when his father died, who, till his death, occupied lands in *C.* but it did not appear what interest he had in the said lands. Upon the death of the pauper's father, who left another son older than the pauper, the pauper entered upon and continued in possession of the whole of the lands till *Lady-day* 1791, but it did not appear what interest he had therein. At *Lady-day* 1791 the pauper sold all the lands except two closes, one called *P. C.*, of the annual value of 6*l.*, the other called *B.*, of the annual value of 8*l.* 10*s.* At *Lady-day* 1791 the pauper, in consequence of a parol agreement which he had entered into with the owners of a cottage and garden of the annual value of 1*l.* 10*s.* in the adjoining parish of *T.*, for the purchase of the same for 10*l.* 10*s.* took possession of the said cottage and garden and continued to reside there more than 40 days, viz. near 12 months; and for more than 40 days during the pauper's occupation of the cottage and garden, he also occupied the close called *B.*, and the close called *P. C.* The pauper never paid the purchase money for the cottage and garden, nor had any conveyance of the same made to him, the sellers appearing to have no title thereto; nor did the pauper pay any rates or taxes in respect thereof. Before the pauper quitted the cottage and garden he sold the closes in *C.*, and on relinquishing possession of the cottage and garden, he let another person into possession thereof, who occupied it in the same manner and on the same terms as the pauper had done; but no consideration was paid to the pauper in respect thereof. — LORD KENYON C. J. thereupon observed, that the case was imperfectly stated, inasmuch as it did not appear that the pauper's occupation of the closes in *C.* was a lawful one; and if that were in doubt, the case ought to be sent back to the Sessions to be restated; for they had only

stated evidence instead of the fact. But he had no difficulty in declaring his opinion, that if the pauper were lawfully possessed of those closes, he had gained a settlement in *T.* by occupying them in conjunction with the cottage and garden there under the agreement stated, the whole being of the annual value of 10*l.* and upwards; and that under such circumstances the purchase act was out of the question. — ASHHURST J. added, that upon the facts stated, the Court below would have been warranted in finding the pauper's occupation to be lawful, it being acquiesced in by all who were interested in disputing the possession with him. And THE OTHER TWO JUDGES signifying their assent, the counsel in support of the orders said, that such being the opinion of the Court, they would not put the parties to the expence of having the case sent down to be restated, when the same judgment must ultimately be given.

The occupation of a cottage for 40 days by the leave of the former tenant, who then went out, under an agreement with him to pay the same rent to the landlord which he had before done, but without any authority from the landlord (the cottage together with other premises occupied at the same time being 10*l.* a year and upwards), was holden to give the occupier a settlement.

178. *Rex* v. *Aldborough*, *T. T.* 41 *G.* 3. 1 *East*, 597. — *Hall*, the pauper, being legally settled in *A.*, rented and occupied a public house in *N.* from the 10th of *October* 1798 till the 12th of *December* 1800, at the yearly rent of 9*l.* On the 10th of *October* 1800, by virtue of an agreement with *S.*, who was tenant of a cottage in *N.*, belonging to Mr. *Barcham*, *Hall* entered and occupied the cottage, which *S.* then left, to which *H.* brought part of his furniture, and where he occasionally resided till he was removed. *H.* agreed to pay the same rent as *S.* had paid, which was 2*l.* 12*s.* 6*d.* *per annum*. *S.* had no authority from *B.* to let his cottage, nor did he know any thing of this agreement. *B.* was applied to by *R. H.* on the 8th of *November* 1800, when *B.* agreed that *R. H.* should be tenant of the cottage, provided that one *M.*, to whom he had previously agreed to let it, did not take it, which *M.* declined; and *H.* continued in the cottage as tenant to *B.*, and was to pay him the same rent of 2*l.* 12*s.* 6*d.* from *Michaelmas* 1800. — THE COURT thought the case too clear for argument; and that the pauper gained a settlement by his occupation of more than 10*l.* a year at the time for 40 days. And LORD KENYON said, that nothing appeared of the former tenant's term having expired, and the law gave him authority to assign his interest; and the pauper did occupy above 10*l.* a year. — Both orders quashed. (*a*)

(*a*) *Vide* Rex *v.* Netherseal, *ante*, pl. 175.

A pauper agreed to commence tenant of premises of the value of 10*l.* *per annum*, and upwards, on the 5th of *July*; and in the *June* preceding, by permission of the then tenant, put several of his goods on the premises, and worked there; the tenant also giving up to

179. *Rex* v. *St. Michael's, in Coventry*, *E. T.* 52 *G.* 3. 15 *East*, 567. — The pauper was removed *on the 28th of June* 1811, from *St. Margaret's, Leicester*, to *St. Michael's, Coventry*, order confirmed, subject, &c. The pauper being settled in *St. M. C.*, and residing in *L.*, on a tenement of less than 10*l.* *per annum* value, on *the 8th of April* 1811, agreed with *B.* for a house and shop in *St. M. L.* at the annual rent of 13*l.* 13*s.*, which house was then in the tenure of *Goff*, who was to be tenant thereof to *B.* till *the 5th of July following*. The pauper was to commence tenant from the said *5th of July*, and to pay rent from that time. On the *15th of June*, by permission of *G.*, the pauper put a stocking-frame into the said shop, and received the key of the shop from *G.* for that purpose. On the *22d and 24th of the same month* he put other frames in: on the *25th of June* the pauper's daughter went to the shop to work, on which day the pauper found the key of

the house in the outward door, and took it and put some goods therein by permission of *G.* the tenant, and *B.* the landlord; and he continued to take articles of furniture to the house as he went backwards and forwards to work at the shop from the 25th of *June* until the 3d of *July*, when he and all his family went to sleep there. *G.* paid the rent for *B.*'s house and shop up to the 5th of *July*, but left the house on the 25th of *June*, and went into an adjoining one. From the 28th of *June* until the removal took place the pauper continued to receive relief from *St. Margaret*'s. The pauper was neither tenant of nor occupied *B.*'s house for 40 days, nor did he ever pay any rent for the same. — Against the orders, it was contended that the pauper was at least a tenant by sufferance on the 28th of *June*, and that he was admitted into possession by consent of the former tenant and landlord, after which he was irremovable; and *Rex* v. *Aldborough* (*a*), was cited. — LORD ELLENBOROUGH C. J. It is material that the tenancy should have commenced, which it had not in this case, the pauper was only in expectation of becoming tenant at a future day. A settlement *by expectation* will form a new head of settlement law; and it is assuming more than the facts of the case warrant, to say that the landlord consented to the pauper's occupation as tenant on the 25th of *June*. The landlord could neither put him in nor turn him out; for another person was then the occupier and tenant of the premises. Then the tenant's leaving the key in the door only showed his consent to the pauper's putting his goods into the house; and the question is, Whether a mere liberty of that sort is an occupation? In *The King* v. *Aldborough* there was a tenancy created in express terms, but here the pauper stood in no relation of tenancy to the premises at the time. He never got into the period of his tenancy, but while he was in the house upon an expectation only of becoming tenant, he was removed. — GROSE J. The pauper's occupation as a tenant is expressly negatived by the case. — LE BLANC J. I cannot see how the objection can be gotten over, that at the time of his removal the pauper's interest had not commenced. — Orders confirmed.

him the key of the premises, and sleeping elsewhere: Held, that this was no occupation of the premises in the relation of tenant; and that the pauper was removable (being actually chargeable) on 28th of *June*.

(*a*) *Ante*, pl. 178.

180. *Rex* v. *South Bemfleet*, *H. T.* 53 *G.* 3. 1 *M. & S.* 154. — Removal from *F.* to *S. B.*; order confirmed, subject, &c. The pauper being settled in *S. B.* left that parish and went to *F.*, where he rented and lived 40 days in a house of the value of 8*l.* 8*s.* *per annum*, having previously to and at the time of his quitting *S. B.*, and during his residence in *F.*, and when the order of removal was made, a freehold estate in *S. B.*, which he had let at the rent of 2*l.* 10*s.* *per annum*. — LORD ELLENBOROUGH C. J. This can never be called an occupation of a freehold interest, where there was no occupation in fact, it being leased out to another, and without some occupation the pauper cannot gain a settlement. The cases have already gone far enough; the mode of reasoning adopted to day would go to show that having any interest whatsoever was an occupation, and if pushed a little farther would take property in the funds. — LE BLANC J. The words of the statute are "come to settle in any tenement," which have been sufficiently departed from already, when it was decided that if a person take a tenement of the value of 10*l.* a year, and underlet a part, he will thereby gain a settlement; but the ground

Where the pauper having a freehold estate in the parish of A, which he had let for 50*s.* *per annum*, rented a tenement in the parish of B, of the value of 8*l.* 8*s.* *per annum*, and resided there 40 days: Held, that he did not gain a settlement in B, as he could not be considered as the occupier of the freehold estate.

of that decision was that he had credit to be trusted with 10*l.* a year. Here, however, the pauper had only credit for a less sum than 10*l.* a year, viz. 8*l.* 8*s.* a year. But it is said that he had property of his own elsewhere: of that, however, he was not the occupier; but an ingenious argument is raised from what fell from the Court in other cases, to show that the principle of those cases is applicable to this, where he never occupied to the value of 10*l.* a year, because it is said that he was not likely to be chargeable; but it is sufficient to say, that those cases are not like the present, and that there is no case which seems to have gone the length contended for. — BAYLEY J. According to the argument, if a person having property of his own of 5*l.* a year value in *Cornwall* leased it out and came to occupy a tenement of 5*l.* a year in *London*, that would be coming to settle in a tenement of 10*l.* a year, and the party would gain a settlement in *London*. Such a construction of the act would be a violent departure from the words of it. — Order of Sessions confirmed.

Where a person engaged himself as waiter at an hotel, and had the tap or privilege of selling malt liquors there, and the use of the cellars for holding the liquors, which had a separate entrance, and of which he kept the key, and paid for his situation of waiter, and for the tap and cellar, the yearly sum of 60*l.*: Held, that this was not such an occupation of the cellar as to confer a settlement. This Court will not upon a case stated presume a hiring for a year, for that is a fact to be found by the Sessions.

181. *Rex* v. *Seacroft*, *E. T.* 54 *G.* 3. 2 *M. & S.* 472. — Removal from *L.* to *S.* Order confirmed, subject, &c. The pauper, while renting and occupying a house in *L.*, of the yearly value of 6*l.* engaged himself as waiter at the hotel in *L.*, and at the same time had the tap, that is, the privilege of selling malt liquors there; and for the convenience of holding his liquors, had the use of the cellar belonging to the hotel, which had a distinct and separate entrance, and of which he kept the key. He paid in the whole for his situation as waiter, and for the tap and cellar, the yearly sum of 60*l.* The annual value of the cellar, independently of the privilege of the tap, was upwards of 6*l.* It was argued, in support of the order of Sessions, that the cellar was merely a perquisite attached to the office of waiter, and not a holding of it as a tenant; and against the order it was contended, 1st, that the Court might presume from the facts stated that he was engaged as waiter by the year; and 2dly, that he must be considered as having rented the cellar during the time that he was engaged as waiter: the rent was included in the annual sum he paid for his situation as waiter, and he had a distinct possession, for he kept the key. And it makes no difference that he held it only for so long as he should continue waiter, because a tenancy at will is sufficient to confer a settlement. — THE COURT, said on the first point, that the Sessions, and not this Court, were the proper forum to draw the presumption of a hiring for a year, which they had not done; secondly, that there did not appear to be any taking of the cellar as a tenant, but the use of it was only a privilege allowed him in respect of the principal thing, which was the hiring himself as a waiter. That before a party can be said to come to settle in a tenement, there must be something like a taking of it as a tenant. — Order of Sessions confirmed.

Where the pau was hired as bailiff to P., who held a farm, under an agreement that

182. *Rex* v. *Minster* (*a*), *M. T.* 55 *G.* 3. 3 *M. & S.* 276.—Removal from *B.* to *M.* Order confirmed, subject, &c. The pauper being settled at *M.*, and a married man, was hired as a bailiff by one *P.*, who had a farm at *Bishopsbourne*, and resided the greater part of the year about three miles distant. The terms of the agreement made between the pauper and his master were as follows: the pauper was to have 10*s.* *per* week for wages;

(*a*) And see Rex *v.* Sutton St. Edmunds, *ante*, pl. 158.; Rex *v.* Bardwell, *ante*, pl. 160.

was to be allowed by his master pork at 5*s.* *per* score, and grist at 4*s.* *per* bushel, for the use of his family, these prices being lower than the general prices. His master was to find him a house, and was either to furnish him with two cows, or the pauper was to be at liberty to hire two, and feed them on his master's farm. The pauper went into the service of *P.* under the said agreement at *Michaelmas* 1808, and continued until *Michaelmas* 1811, and he and his family lived in the house of his master at *Bishopsbourne*, and occupied the kitchen and two rooms up stairs, and his wife took care of the house. The pauper hired two cows, which fed during the summer in the pastures of his master, and in the winter in his master's straw-yard, with straw that was grown upon his master's lands. The Sessions found that the rooms occupied by the pauper and his family, in the house of his master, were not of the yearly value of 10*l.*, but that the pasturage and keep of the cows, upon the lands of his master, were above that yearly value. The cases of *Rex* v. *Melkridge* (*a*), and *Rex* v. *Tolpuddle* (*b*), were cited. — LORD ELLENBOROUGH C. J. Here the pauper had a profit issuing out of land to be taken *in loco certo*, which has been adjudged by the cases to be a tenement. The distinction between the occupation of a servant in the house of his master, and this, has been adverted to, and the argument, as it seems to me, has been properly answered, that the apartments of the servants are only as an appendage of the service; they are allotted to him for the more convenient performance of the service, which is the principal thing. Here it is stated that the pauper hired two cows, and that they were kept on the land of the master during the summer months; and it does not appear that this was connected with the service, or that it was necessary for the convenient performance of it, that he should have the two cows. In this respect, therefore, this case may be distinguished from that of servants having apartments in the houses of their master for the better discharge of their duties to their masters. The case now before the Court falls within those which have been decided, particularly the case of *Rex* v. *Melkridge*, the only difference being, that there he was the servant of many persons, here *he is the* servant of only one; still the compensation for the tenement in both is the same, namely, the service of the pauper; which the Court held to be equivalent to his paying rent. The other cases of *Rex* v. *Tolpuddle*, and *Rex* v. *Piddletrenthide* (*c*) are decisive that this interest was a tenement. — LE BLANC J. If this case depended upon any consideration involving the value of the apartments or lodging which the pauper occupied in the house of the master, I should not think the case of *Rex* v. *Melkridge* an authority that called upon us to decide in favour of the settlement. But it is stated, that the yearly value of the pasturage, independently of the house in which the pauper resided, was upwards of 10*l.* That being so, the cases which have been determined have held, that whether the pauper pay in service or in money, it shall be a coming to settle on a tenement. In this case, if the pauper's occupation of the tenement, was necessarily connected with the service of his master, as in the case of occupying apartments in the house of the master, I should have no hesitation in saying that that would not have conferred a settlement, although of a greater yearly value than 10*l.*, because the occupation

he was to have weekly wages, &c. and his master to find him a house, and either to furnish him with two cows, or the pauper was to be at liberty to hire two, and feed them on the farm, and he served three years under the agreement, and lived with his family in his master's house, occupying the kitchen and two rooms, and hired two cows, which fed during the summer on the pastures of his master: Held, that by the feeding of the cows, which was above the yearly value of 10*l.*, the pauper acquired a settlement.

(*a*) *Post*, pl. 205.

(*b*) *Ante*, pl. 139.

(*c*) *Ante*, pl. 137.

would have been necessary for the performance of the service, for which the master might allot what apartments he pleased. In like manner, if the master had allotted to the pauper so much milk a day, I should have thought the pauper would not have gained a settlement. But in the present case the pauper has a distinct interest in the pasturage of the two cows, unconnected with his service to the master's dairy; and this liberty of taking the profits out of land is found to be of a greater value than 10*l.* I do not know, therefore, how to distinguish this case from the cases already decided. — BAYLEY J. We have a clear and particular distinction enabling us to decide this case. Here something is given to the servant unconnected with the service. It is the same thing as if the servant had stipulated that as he had a family, he must have certain land for his own occupation, and that the master should allow him to become a distinct occupier of land to the value of 10*l.* a year. If that had been so, there are not wanting cases to show that it is not necessary that a rent should be paid in money, or indeed that there should be any rent at all, in order to constitute him the occupier of a tenement, but a service is quite sufficient. The case of the herdsman is full to that point. If that be so, what is the present case but that of a servant who stipulates for a profit out of land of more than the yearly value of 10*l.*, for which he is to pay in service. — Order quashed.

Where a person rented and resided on a tenement of 4*l.* a year, and in the same year bought at a public auction, on 12th *August*, four lots of oats growing in one field, for 12*l.* 14*s.*, which oats were of different kinds that ripened at different periods, and he began to reap them on 14th *September*, and continued reaping them as they ripened, and carted them away at intervals between the 14th *September* and 3d *November*, on which day he carted off the last load: Held, that he did not thereby acquire a settlement.

183. *Rex* v. *Bowness* (*a*), *T. T.* 55 *G.* 3. 4 *M. & S.* 210.—Removal from *B.* to *K.* — Order quashed, subject, &c. The pauper being settled at *K.* in 1814, rented a dwelling-house in *B.*, of the annual value of 4*l.*, and resided upon it during that year. On the 12th of *August* in the same year he bought, at a public auction, four lots of oats, growing in the same field at *Burgh*, for the sum and of the value of 12*l.* 14*s.* The oats were of different kinds that ripened at different periods. He began to reap them on the 14th of *September*, and continued reaping them as they ripened, and carted them away at intervals between the 14th of *September* and the 3d of *November* in the same year, on which day he carried off the last load. — LORD ELLENBOROUGH C. J. We need not trouble the other side. I own it appears to me that it has been uniformly adopted as the rule for construing the statute of *Car.* 2., as much as if the word itself had been inserted in the statute, that the *coming to settle in* means by *renting* or holding in the character of tenant. It is true this word *renting* is not in the statute, but what is found in the subsequent stat. 9 & 10 *W.* 3. *c.* 11., shows pretty well how the statute of *Car.* 2. was understood. For the subsequent statute enacts, that no person who shall come into a parish by certificate shall gain a settlement therein, unless he shall take a *lease* of a tenement of the value of 10*l.*, &c. Therefore, certainly this enactment was framed upon an understanding that the *coming to settle*, in the statute of *Car.* 2., meant a taking under a letting or renting. Upon a subject like this, one is afraid to enlarge, lest what may be said should lay the foundation of future discussions. What has been said already upon the subject, has, according to my understanding of it, reached the extreme limits of common sense. It is, therefore, sufficient to say upon the present occasion, that this was a purchase and not a renting, or in any way a holding as

(*a*) See Rex v. St. John, in Glastonbury, *post*, pl. 188.

tenant, and upon that construction this person did not gain a settlement. I feel no inclination to extend the decisions upon this subject; indeed I hardly go with them to the extent that they have gone already, and think it much better in this case to abide by the statute.—LE BLANC J. There is one objection to which no answer has been given. It is admitted that the party must have come to settle in a tenement; that is, must have resided in the parish, while he held a tenement of the value of 10*l.* for 40 days. Now, in this instance, allowing all that has been stated as the law to be correct, and the authorities to apply, and granting that this was a tenement, how can we say that this person has resided 40 days in the parish, while he held a tenement of the value required? He rented the dwelling-house of the annual value of 4*l.* for the whole year, and he bought a crop of oats by auction on the 12th of *August*, which he began to cut on the 14th of *September*, and it does not appear but that he carried the greater part in value of the crop before the expiration of 40 days from the time of his first purchasing it; and if that were so, his interest would have ceased *pro tanto* within the 40 days, and he would not have held a tenement for that time of the annual value of 10*l.* Therefore, on the ground that it does not appear that there has been a holding for 40 days of a tenement of the value of 10*l.* a year, I think that the order of Sessions cannot be supported.—BAYLEY J. It must appear that the party had an interest in land of the annual value of 10*l.* for 40 days, but here his interest diminished in value *de die in diem*, as he cleared the land, and it is consistent with this statement, that before 40 days from the 12th of *August* he had cleared so much as would reduce the tenement below the yearly value of 10*l.*—Order of Sessions quashed.

184. *Rex* v. *Ashton-under-Lyne*, *M. T.* 56 *G.* 3. 4 *M. & S.* 357.—Removal from *S.* to *A.*—Order confirmed, subject, &c. In 1803 *S. M.* being settled at *A.*, and married to the pauper, enlisted into the king's service, and in 1809 deserted from it, leaving his wife and children in *S.* Afterwards the pauper took a house in *S.* at 5*l.* a year rent, and resided in it with her children to the time of her removal, which was a period of several years. During the time of her residence in this house she took another house at 5*l.* 5*s.* a year rent, and put some of her husband's furniture into it, intending at the time to remove from the house where she was then living, but she never did remove, but underlet it to another person. The landlord considered the pauper as liable for the rent, and at the expiration of the first quarter called upon her for payment of it. During this quarter her husband came to see her, and remained for seven weeks of it concealed in the house in which she resided. The houses were taken without the privity of the husband, but the fact of their having been taken was communicated to him at the time of this visit. The landlord never considered her husband as his tenant, nor ever knew of his existence. The question was, Whether the pauper's husband gained a settlement in *S*?—LORD ELLENBOROUGH C. J. This is a new head of settlement *latitando*; but it appears to me that it would be a gross perversion of terms to say that this pauper came to settle in a house, when he only came to it for the purpose of concealing himself from the search of those who had a right to his service, and when the most that can be said of his residence is, that the wife does not turn him out. But the

Where pauper's husband, being a soldier, deserted and left his family in the parish of S., and the wife during his absence, took a house at 5*l.* a year in S., and lived in it with her family, and also took another house at 5*l.* 5*s.* a year, and put some of her husband's furniture in it, intending to remove thither, but never did remove but underlet it: and during the time she held both, her husband came to see her, and remained seven weeks concealed

in the house where she lived, and was made acquainted with her having taken the two: Held, that the husband did not gain a settlement by this residence.

wife was the ostensible party; she it is that makes the contract in her own name, and nothing is ever done on the husband's part to ratify it in any way. His coming into the parish, therefore, was nothing better than the mere intrusion of a fugitive who is lurking in hiding-places, and was not, in any sense, a coming to settle; that is, not a coming into the parish *animo residendi*.—LE BLANC J. What the statute requires is a coming to settle in a tenement; the construction of which has been that a person who comes into a parish to reside in a tenement must have some kind of interest in it. But in this case the husband had not any interest; for he neither took the tenement himself or by his agent, but the wife took it for herself in the absence of her husband, and without his privity or even his knowledge. Afterwards the husband comes home to his wife, not knowing that she has entered into any contract, and resides with her for a time, during which it is communicated to him that she had made the contract. This is the whole of the case, and it does not appear to me to follow that the husband must be considered as having come to settle in this tenement, because he may be liable in respect of his wife's occupation. The contract of the wife was fraudulent, for the landlord was never made acquainted that she had a husband, and never knew or adopted him as tenant; he might have declined the contract altogether, or put an end to it, had he been informed that she was a married woman. It seems to me that under those circumstances there was nothing to prevent the parish officers from removing him.—BAYLEY J. I am entirely of the same opinion. It was never the intention of the landlord to let the tenement to the husband.—Order of Sessions confirmed.

Where pauper, a married man, agreed to serve S. for a year as a labourer, and was to have 20*l.* a year, a *house and garden*, a piece of land for potatoes, the milk of a cow, and feeding of a pig, which were to run on a neighbouring field; and under this agreement the pauper served, and had the exclusive occupation of the house for himself and family, the house being about 100 yards from the house of S., and being necessary for the performance of his service, and if he

185. *Rex* v. *Kelstern*, *E. T.* 56 *G.* 3. 5 *M. & S.* 136.—Removal from *A.* to *K.*—Order confirmed, subject, &c. The pauper being settled at *K.*, and being a married man, agreed with one *S.* of *A.* to serve him for a year. By the agreement, the pauper was to have 20*l.* a year for wages, a house and garden, a piece of land for planting potatoes, the milk of a cow, which was to run on a field near the house, and also the privilege of feeding a pig on the same field. The cow was to be *S.*'s cow, and it went on different parts of the farm, but was milked by the pauper. *S.*'s house was about 100 yards distant from the house in which the pauper lived, and a turnpike road ran between them. The pauper and his family had the house to themselves; no other person occupied any part of it; and *S.* kept nothing in it. The pauper lived in the house in *A.* a year and a half. If he had not had the house, he would have had more wages, and a house was necessary for the performance of his service. The annual value of the pasturage for the cow, of the grazing of the pig, of the house and garden, and of the piece of potatoe ground, together, exceeded 10*l.*; without the house the annual value was under 10*l.*—LORD ELLENBOROUGH C. J. I own I have no doubt in this case, that the only occupation of this house was the occupation of the master and not of the servant, whom the master placed there for the mutual convenience of both parties. The master's house was about a hundred yards distant from it, and the servant had it thrown into the bargain in cumulation of wages. This may be compared to rooms allotted to a coachman over the stables of his master, or to an outhouse, where, being a family man, it is more

convenient that he should be out of the house; but that is nothing more than the occupation of the master. So here I cannot see that the occupation goes further. In *Rex* v. *Melkridge* (*a*), the question did not turn upon whether it was an occupation by the herdsman or the commoners who employed him, for it did not appear that the commoners ever had an occupation in any way, but the herdsman had it exclusively. At present, it seems to me to be incontestably plain, that this was nothing more than the occupation of the master, by the servant. Therefore the house cannot go to form a part of the tenement so as to make up the value of 10*l.* a year. — BAYLEY J. I take the distinction as laid down in *Rex* v. *Minster* (*b*), to be this, that if the occupation be unconnected with the service, it will confer a settlement; but if it be necessarily connected with the service, as if it be necessary for the due performance of the service, it shall not confer a settlement. Now from this case I collect that the occupation of the house was necessary for the performance of the service; therefore it must be taken as the occupation of the master, and not of the servant. — ABBOTT J. I think it is clear that the pauper did not come to settle upon a tenement of 10*l.* a year. And I am glad that the Court is not compelled to decide that it did, because such a decision would tend much to deprive a very meritorious class of persons, namely, servants in husbandry, of many comforts which accrue to them from this species of agreement. A cottage may of itself be not worth 10*l.* a year, but if it is to be combined with other privileges, such as are given to the pauper by this contract, in order to bring the value to that amount, and thereby confer a settlement, I am afraid that farmers will henceforth be unwilling to grant these additional advantages to servants in husbandry, lest they should bring so many additional burthens upon the parish. I am very glad, therefore, to find that the Court is not under the necessity of holding this to be a settlement, for no probable addition of wages would afford an adequate compensation in point of comfort for the loss of these advantages. — Order confirmed.

had not had it he would have had more wages: Held, that this was not a coming to settle on a tenement to confer a settlement.

(*a*) *Ante*, pl. 205.

(*b*) *Ante*, pl. 182.

186. *Rex* v. *Brighton*, *H. T.* 58 *G.* 3. 1 *B.* & *A.* 270. — Removal from *G.* to *B.* — Order confirmed, subject, &c. The pauper had been serjeant in a regiment, which lay in barracks at *B.*, and performed all the duties, and received all the advantages incident to his situation as serjeant, and during that time had taken a tenement there of the value of 10*l.* a year, or more, in which he had resided with his family for more than 40 days. — LORD ELLENBOROUGH C. J. In this case, it seems to me, that the Sessions have drawn the right conclusion. It is contended that the party here had no intention of coming to settle at *B.*; that is not correct; certainly he had the intention of settling there, subject, however, to the power of those who directed his movement. The case states, that he himself took the tenement as a lodging for himself and his family. Now suppose an action then to have been brought against him for the non-payment of rent, he clearly could not have set up as a defence, that he was not the tenant of the premises; then if he, as a tenant, occupied this house of the yearly value of 10*l.* and upwards, he was, during his occupation, irremoveable, and that having continued for 40 days, he has gained a settlement. But it is said that the mutiny act prevents a soldier from gaining a settlement; that act, however, contains no such express pro-

A soldier, whilst his regiment lay in barracks at B., took a house there for himself and family, of the yearly value of 10*l.*; and resided therein more than 40 days: Held, that this was coming to settle in a tenement, and that he thereby gained a settlement.

vision; the clause enabling every soldier to be examined as to his settlement, does not disqualify him from gaining a new one. The case of hiring and service is quite distinguishable from this; that proceeds on the ground of a person's not being permitted to contract two relations inconsistent with each other. In order to gain a settlement by hiring and service, he must engage to serve at all events for a year; now a soldier has not the capacity to render such service; for an order from the war office may at any time intervene, and take him from his master's control. The case of taking a tenement is quite different; he does not there engage to reside in it for any definite period, and, if he does actually reside for 40 days, it is sufficient. If not, it would equally follow, that supposing an estate to have devolved upon him by an act of law, or that he had made a purchase to the amount of 30*l.*, still no settlement would be gained by him. — Order of Sessions confirmed.

A pauper, employed as a labourer by the Board of Ordnance, having previously occupied a house at an annual rent of 7*l.*, which was then purchased by the Board, still continued to reside in part of the premises, at a weekly rent of 2*s.*, which was deducted out of his wages, and during such last occupation he also occupied a shop (the shop and house together being of the annual value of 10*l.*), and upon his dismissal from his employment he gave up possession of the house as required: Held, that this last occupation of the house was not as tenant, but as servant, and that no settlement was thereby gained.

187. *Rex* v. *Cheshunt* (*a*), *E. T.* 58 *G.* 3. 1 *B.* & *A.* 473. — Removal from *W.* to *C.* — Order confirmed, subject, &c. The pauper was a labourer in the employment of the Board of Ordnance, at *W.* After residing upwards of two years in a house in that parish at an annual rent of 7*l.*, it was purchased by the Board, and a part of the premises having been taken from it, he continued to live in it at a weekly rent of 2*s.*, which was deducted from his wages. The Board of Ordnance had several other houses in *W.* for labourers, who paid weekly rents for them, but inhabited them so long only as they continued in the employment of the Board. When the pauper was dismissed from the employment, he was required to give up the key of the house, which he at first refused to do, but after a short time gave it to the person appointed to succeed him in the house by the superintendant. During the time he so held this house at 2*s.* a week, he also occupied, for a space of time exceeding 40 days, a shop in the same parish, the shop and the house together being of the annual value of 10*l.* The Court of Quarter Sessions were of opinion that the occupation of the house under the above circumstances did not operate in aid to confer a settlement within the meaning of the 13 & 14 *Car.* 2. *c.* 12. — LORD ELLENBOROUGH C. J. In this case it seems to me that the party occupied this house as a servant only, and not in the character of a tenant. It is like the case of a coachman, who frequently occupies a room over the stables; but such occupation is not within the meaning of 13 & 14 *Car.* 2. The pauper here was divested of the tenement as soon as his service terminated. He quitted the possession reluctantly, and was succeeded by the person who succeeded him in his employment under the Board of Ordnance. All this clearly shows that he was only entitled to hold it during and for the more convenient performance of his service. If the Court should hold, in this and similar cases, that the legal relation of landlord and tenant subsisted, it would become necessary to turn such persons out of possession by the regular proceedings in ejectment, and every gentleman having 20 or 30 cottages in which his labourers resided, would be compelled, on any change of their service, to have recourse to such means. This would be productive of the most serious inconvenience. Upon the whole view of this case, I think it plainly appears, that the relation of landlord and tenant never did subsist

(*a*) And see Rex *v.* Lakenheath, *ante*, pl. 157.

here, and unless that were so, this was not an occupation within 13 & 14 *Car.* 2., and no settlement could be gained by it. — BAYLEY J. I am of the same opinion. The case of *Rex* v. *Minster* (*a*), only decided that the occupation of a tenement which was wholly unconnected with the service would confer a settlement, but that the occupation of one connected with the service would not. In this case the tenement is connected with the pauper's service under the Board of Ordnance. — ABBOTT J. If the case had stated, instead of using the words weekly rent, that the pauper lived in the house, and received 18*s.*, and not 20*s. per* week wages, there would have been no doubt. And I consider that in substance it is so stated. Here the relation which existed was only that of master and servant, and not that of landlord and tenant. — HOLROYD J. concurred. — Order of Sessions confirmed.

(*a*) *Ante*, pl. 182.

188. *Rex* v. *St. John* in *Glastonbury*, *E. T.* 53 *G.* 3. 1 *B. & A.* 481. — Removal from *St. John* in *Glastonbury* to *S. P.* — Order quashed, subject, &c. The pauper being legally settled in *S. P.*, in 1811, went to live in *St. J.*, and there occupied for more than 40 days a house and two pieces of potatoe ground of the yearly value together of 9*l.* 10*s.* In addition to the property so rented, he at the same time occupied a piece of freehold land of his own, legally conveyed to him, which he had purchased for 10*l.* and built upon, of the yearly value of 1*l.* 10*s.*; but before the order of removal was made, he sold and gave it up. The house and potatoe ground rented by the pauper not being alone of sufficient value to confer a settlement, the question submitted to the Court of King's Bench is, Whether the Sessions were right in determining that the yearly value of the freehold land, being the property of the pauper, might be added to the yearly value of that which he so rented, so as to settle the pauper and his family in the parish of *St. J.*, where they had become chargeable before their removal? — LORD ELLENBOROUGH C. J. The argument in this case has brought back to my mind the decision in *Rex* v. *Bowness*. (*b*) I think that the coming to settle in the 13 & 14 *Car.* 2. must mean a coming to settle as tenant; the act having said, that persons who shall come to settle on a tenement of the value of 10*l.* shall not be removeable, must be construed to imply that they shall be removeable if the tenement be of less value. Now it is clear, that at that time a man was not removeable who resided on a tenement of less value than 10*l.*, if that tenement were his own property; the legislature, therefore, could not have contemplated a residence on a man's own property, when they used the words, coming to settle on a tenement. What is reported to have fallen from me in *Rex* v. *Bowness*, was certainly not to be considered as an *obiter dictum*, but as confirmed by the authority of Lord *Kenyon* and Mr. J. *Lawrence* in the cases cited. — BAYLEY J. I am of the same opinion. It appears from 13 & 14 *Car.* 2., that the party may be removed, if he comes to settle on a tenement of less than 10*l.* yearly value; but that if it be of that yearly value he cannot. Then the legislature must by the word tenement have contemplated a description of property, from which, if of less than 10*l.* yearly value, a party could be removed; now if the property were his own, he could not be removed from it, however small its value; and therefore it seems to me, that this is not a tenement within the meaning of 13 &

A pauper, by occupying a freehold estate of his own, and also other lands as tenant, the whole being of the aggregate value of 10*l.*, does not thereby gain a settlement, it being necessary under the 13 & 14 Car. 2. c. 12., that he should come to settle on all the property in the character of tenant.

(*b*) *Ante*, pl. 183.

14 *Car.* 2. This is strongly illustrated by the 9 & 10 *W.* 3. *c.* 11. One of the means given by that act, by which a certificate may be put an end to, is by taking a lease of a tenement of the value of 10*l.*; from which it may fairly be inferred, that the legislature thought the 13 & 14 *Car.* 2. *c.* 12. applied to leaseholders and not to freeholders. I am therefore of opinion, that in this case the two tenements cannot unite so as to give the pauper a legal settlement in the parish of *St. J.* — ABBOTT J. My first opinion was, that the estate, which the pauper occupied as his own, and that which he occupied as tenant, would have united so as to confer a settlement, if they were jointly of the annual value of 10*l.* But the argument has satisfied me that they cannot; and that the coming to settle, as used in the statute, means the coming to settle in the character of a tenant. — HOLROYD J. I own that upon this case I have entertained considerable doubts, which are not entirely removed. The statute says, that no person coming to settle on a tenement of the value of 10*l.* shall be removeable. That is certainly saying, by implication, that he may be removed if the tenement be of less value. Now a person cannot be removed from his own property, of whatever value it may be; and therefore it should seem that the statute does not apply to a man's own property. But my doubt arises from this, I consider that the statute meant to enact, that when a man resided 40 days on property where he was entitled to reside, he should gain a settlement. Now here the party did reside 40 days, and was irremoveable all that time. I am, therefore, rather inclined to think, that by so doing he did gain a settlement. — Order of Sessions quashed.

The statutes of 8 & 9 W. 3. c. 11., and 13 & 14 Car. 2. c. 12. are in *pari materia*, and must receive a similar construction; and therefore, where a pauper, in addition to house and land, had agisted three cows in the fields of his landlord for two or three months, but no positive contract for such agistment was proved: it was held, that the Sessions might properly infer that this was "taking a lease of a tenement," within the 9 & 10 W. 3. c. 11., so as to

189. *Rex* v. *Croft*, *M. T.* 60 *G.* 3. & 1 *G.* 4. 3 *B.* & *A.* 171. — Removal from *C.* to *S. S.* — Order quashed, subject, &c. The pauper was born in the appellants' parish, but was afterwards bound apprentice to, and served *E. Stephens*, in *C.*, for several years. The respondents, in answer to this, produced a certificate from *Earl Shilton* acknowledging the father of *E. S.*, *Elizabeth* his wife, and *Francis* their child, to belong to that parish. The appellants then proved, that the father of *Stephens*, after he came to *C.*, under the certificate, occupied a house and homestead in *C.*, and, at the same time, some land in *Marston*, and that in one year, while he was in the occupation of the said premises, he agisted three cows for two or three months in the fields of his landlord. No positive contract for the agistment was proved. The Court determined that the three cows were agisted for above 40 days in the year, and that the average value of the agistment, reckoned by the year, added to the value of the other tenements, made the whole above 10*l.* *per annum*, but, if the value of the agistment, taken only for the time that the cows were on the land, were to be added, it would make the whole less than 10*l.* — ABBOTT C. J. The question in this case, arising on the construction of the stat. 9 & 10 *W.* 3. *c.* 11., by which no person who shall come with a certificate into a parish, shall gain a settlement there, unless he shall really and *bonâ fide* take a lease of a tenement of the value of 10*l.*, is one of general importance. In the course of the argument my opinion has varied on the point. The Court will, therefore, reserve its judgment on that part of the

discharge a certificate, although the value of the agistment, *if computed only for the time of the actual occupation*, was not sufficient, if added to the house and land, to make up the value of 10*l*.

case. On the other point, however, I entertain no doubt. If the facts stated by the Sessions in this case were not sufficient for the Court to form any reasonable conclusion as to what must have been the inference of fact drawn by the Sessions, we would send the case to be reheard; but it seems to me that they are sufficient, and the inference of fact drawn by the Sessions was right. It is stated in the case, that the pauper's father, after he came to *C.*, under the certificate, occupied a house there, and, at the same time, some land in *Marston*; and that in one year, while he was in the occupation of the said premises, he agisted three cows, in the fields of his landlord, for two or three months. Now it seems to me, from the phrase "he agisted," that he must have done so for a compensation to be paid to the landlord. For if the fact had been that the cows only ran there, without any payment to the landlord, I think the Sessions would not have used the word "*agisted.*" If the case had stopt here, no doubt could have been entertained as to what the decision of the Sessions was upon this point. They have, however, added, that "no positive contract of "the agistment was proved." But I cannot understand that to mean more, than that there was no direct or express proof of the bargain between the parties, either by the production of a witness present at it, or any agreement in writing respecting it. The Sessions, however, by the decision to which they have come, must have inferred a contract; and it seems to me, that from the proof given to them of the agistment of the cattle, they might lawfully have drawn that inference; and, therefore, that they did right in quashing the order. Upon the other points, the Court will take time to consider of its judgment.—BAYLEY J. I have no doubt with respect to the question which has been principally discussed in this argument. It is for the Sessions to draw the inferences from the facts proved; and, if there are premises stated from which it appears that they might lawfully draw such inferences, the Court will not disturb their decision. In this case it appears that the cattle ran for two or three months in the landlord's fields. Now, from that, the Sessions might very properly infer, that the landlord was to receive a compensation for it; for it was not likely that the cattle should be there without the landlord's knowledge, and there is nothing in the case to show that his permission was given from motives of charity. I think, therefore, that the Sessions were right in inferring a contract; and that they have drawn that inference is manifest from the result of the appeal; for they have decided that the pauper's settlement was in *C.* Now it is quite clear, unless the agistment be taken into consideration, that his settlement is not in that parish; and, therefore, as it seems to me, no doubt can be entertained that the Sessions took into their consideration the value of the agistment, and must have inferred that there was a contract for it between the parties. Upon the other points, I shall at present give no opinion.—HOLROYD J. It appears to me, from the facts stated in this case, that the Sessions must have drawn an inference that there was a contract for the agistment of the cattle; and those facts were fully sufficient to warrant that conclusion. The Court, therefore, does not draw any inference itself, but only yields to that which the Sessions have already drawn. I think that the term agistment does import a contract between the parties; for the cattle must have been there,

either by right, or sufferance of the owner of the land. If this had been a question between a landlord and tenant, the circumstance of the cattle being upon the land would not have afforded the same ground for presumption. But here it is a question between third persons; and, the agistment having been submitted to by the landlord, who might have disputed it, and who did not do so, I think we ought to presume, that the cattle were there by right, and that there was a contract between the parties. — BEST J. Upon looking at this case, it seems to me, that the question presented for our consideration, is simply, whether the Sessions were at liberty to infer a contract, from the facts here stated. Now it is quite clear, that they might do so; for it is not necessary, either in this or any other case, that there should be positive proof. It is quite sufficient, if other circumstances be proved from whence such a conclusion is necessarily to be drawn. The word "agistment" means where cattle are in the land of another by his consent, or by some contract with the owner of the land. The proof, therefore, being that the cattle were agisted for two or three months in the fields of the landlord, the Sessions might very properly draw the conclusion that there was a contract between the parties for that purpose. — On a subsequent day, ABBOTT C. J., after stating the case, proceeded as follows: This case was lately argued before us at *Serjeant's Inn Hall*. After the argument was closed, we gave our opinions upon some of the points urged at the bar, and we decided, for the reasons then given, that the Sessions might, upon the facts stated, lawfully presume a contract for the depasturing of the cows, and must be understood by us to have, in fact, made that presumption. But we reserved for our further consideration the question, Whether presuming such a contract, or, in other words, whether presuming a taking of the pasturage for the period mentioned this case presented, upon the whole, a taking of a lease of a tenement of the value of 10*l.* within the meaning of the statute 8 & 9 *W.* 3. *c.* 11.? Upon the authorities there can be no doubt that the facts here stated must be deemed to be a coming to settle upon a tenement of the yearly value of 10*l.* within the meaning of the statute 13 & 14 *Car.* 2. *c.* 12. The only doubt was, whether a difference of construction might prevail upon the certificate act, the 8 & 9 *W.* 3. *c.* 11., which is expressed in somewhat more precise terms, viz. "*bonâ fide* take a lease of a "tenement of the value of 10*l.*" It is obvious, however, that in construing these words, reference must be had to the former statute to supply the word "yearly," which is wanting in this statute; and in like manner, the words of the second branch of this clause, "execute some annual office in such parish, being "legally placed in such office," have been construed with reference to the stat. 3 & 4 *W.* & *M.* *c.* 11. §. 6. to require a service of the office for an entire year. *Rex* v. *Inhabitants of Tittleworth*. (*a*) No case has been found in which the statute 8 & 9 *W.* 3. has received a different construction from the stat. 13 & 14 *Car.* 2. as to the nature of the tenement, or of the taking thereof. On the contrary, it has been decided that a lease at will is a lease within the certificate act, *Str.* 502. And in the case of *Rex* v. *Inhabitants of Shenstone* (*b*), Lord *Mansfield* says the two acts are to be considered together, being in *pari*

(*a*) Burr. Set. Cas. 238.

(*b*) *Ante*, pl. 129.

materiâ. And in *Burn's Justice* we find extracts from these statutes placed together at the beginning of the section in which that author has collected the cases "of settlement by renting a "tenement," and no distinction is afterwards made. We are of opinion, therefore, that no distinction ought in this respect to be now introduced. This branch of the law is to be administered by different tribunals setting in every county of *England*; and it is, therefore, of the utmost importance that the rules of decision should be as plain and as general as the language of the statutes will admit, and that no subtle or novel distinctions should be introduced or countenanced. — Order of Sessions confirmed.

190. *Rex* v. *North Collingham* (*a*), *E. T.* 4 *G.* 4. 1 *B. & C.* 578. Two justices by their order removed *Mary Barks*, the widow of *William Barks*, and her children, from *N. C.* in *N.* to *F.* in *L.* Upon appeal, the Sessions discharged the order, subject, &c. The pauper's husband being legally settled in *F.* came to reside at *N. C.*, in the year 1812, where he took and hired a house (being a separate and distinct dwelling-house), with a garden, for a year, and from year to year, at the annual rent of 6*l.* 6*s.*, and he continued to hold and occupy such house and garden and actually paid the aforesaid yearly rent for the same from the year 1812 up to his death, which happened in *December* 1821; but during the last four years of his holding the house, he let to a lodger at 30*s.* a year, one of the rooms on the ground-floor. The room communicated with the yard appurtenant to the house by an outer door, and with the adjoining room of the house by an inner door, of which doors the lodger kept the keys. As there was another outer door to the house, no alteration whatever was made in the house or doors during any part of the period for which *W. B.* was tenant thereof. The room was let unfurnished, and the lodger occupied nothing but the room, and *W. B.* was assessed and rated for the entire house to the poor, the highways and king's taxes, and paid such assessments during the whole of his tenancy. In the year 1819 (*b*), the pauper *bonâ fide* hired a piece of garden-ground in the parish of *N. C.* for a year, at the rent of 3*l.* 15*s.*, which ground he actually occupied for a year, and paid the said rent, and continued in the occupation thereof up to the time of his death. — ABBOTT C. J. The question arises on the construction of the statute 59 *G.* 3. *c.* 50., which was made for the purpose of restraining the acquisition of settlements by renting tenements. It is a general rule, that acts in *pari materiâ* shall receive a similar construction. Before the passing of the act a party might gain a settlement by taking various tenements at different times. The question is, whether since the passing of the act the tenement must be taken at one rent and at the same time. The words are, "that no person shall "acquire a settlement in any parish or township maintaining its own "poor in *England*, by reason of his or her dwelling for 40 days "in any tenement rented by such person, unless such tenement "shall consist of a house or building within such parish or township, "being a separate and distinct dwelling-house or building, or of

After the passing 59 G. 3. c. 50., the pauper held *together* for a year a house and garden, and paid rent for the same during that period. They were taken of different persons at different times. The rent of the house was 6*l.* 6*s.* The pauper underlet one room, communicating with the rest of the house by an inner door, and with the yard by an outer door. The rent of the garden was 3*l.* 15*s.* *per annum*, and it was occupied by the pauper himself: Held, that although there was a separate taking of the house and of the land, that this was a tenement within the meaning of 59 G. 3. c. 50.; and, secondly, that, although one of the rooms was underlet, still the house continued to be the

(*a*) And see Rex *v.* Stow, *post*, pl. 191; Rex *v.* Tonbridge, *post*, pl. 217.

(*b*) This was admitted, in argument, to have been after the 2d of July 1819, the day on which the 59 G. 3 c. 50. received the royal assent.

separate and distinct dwelling-house of the pauper within the meaning of that statute.

"land within such parish or township, or of *both*, *bonâ fide* hired by "such person, at and for the sum of 10*l.* a year at the least, for the "term of one whole year; nor unless such house or building shall "be held, and such land occupied, and the rent for the same "actually paid for the term of one whole year at the least by the "person hiring the same." Now by this act it is not sufficient that the hiring should be of a tenement of the value of 10*l. per annum*, but the house must be held, and the land occupied, and the rent paid for one whole year. The first question is, Whether the pauper held a tenement within the meaning of the statute? Under the former acts a tenement might consist of various parcels taken at various times, and there is nothing in this act to alter the old law in that respect. As to the second question, it is to be observed that a different expression is applied to land and to houses. The house is to be *held*, but the land is to be *occupied*: it was probably intended that a party taking lodgings, properly so called, should not be thereby prevented from gaining a settlement. The question is, Did the pauper *hold* the whole dwelling-house? It is said that the lodger held a part distinct from the rest, so that a burglary committed in that part might, in an indictment, be laid to have been in the dwelling-house of the lodger. I think, however, that that proposition is not established by the facts stated. It is said, that putting the key of the inner door into the hands of the lodger was the same thing as if there was a brick-wall between his and the adjoining room. If, indeed, it had been stated that the key was delivered to the lodger for the express purpose of preventing the communication between the different apartments, there would be more weight in the argument. But the key may have been delivered to him for the purpose of enabling him to enter either way, and if that was the object, then he had not any distinct dwelling-house. I rather infer, from the facts stated, that that was the object for which the key was delivered; and if so, then the pauper held the whole house, and it is to be considered as one entire tenement; and in that case, a burglary committed in the part occupied by the lodger must have been laid to have been in the dwelling-house of the pauper. For these reasons I am of opinion that the pauper gained a settlement in the parish of *N. C.* and that the order of Sessions must be affirmed. — BAYLEY J. I agree entirely with my Lord Chief Justice. The second point is a question of fact rather than of law. The Sessions might have found it a separate holding; but I see nothing in the facts stated, from which a separation of the part occupied by the lodger from the rest of the house must be necessarily inferred. — HOLROYD J. The word "tenement" in this statute must receive the same construction as it has in former acts made in *pari materiâ*. The statute was only intended to alter the law in the particulars distinctly pointed out; and nothing is said to make it necessary that the whole of the tenement should be taken at one time. I am also of opinion, upon the facts stated, that the whole dwelling-house is to be considered as the dwelling-house of the pauper. — BEST J. It probably was the intention of the legislature that a settlement should not be gained in such a case as the present. But we are bound to decide according to the words of the statute: and as to the first point, I entirely agree with the rest of the Court: as to the second, I have no doubt

that in an indictment for burglary, the room occupied by the lodger might be described as the pauper's dwelling-house. Notwithstanding the underletting, in point of law he still continued the tenant of the whole house. — Order of Sessions confirmed.

191. *Rex* v. *Stow, E.-T.* 6 *G.* 4. 4 *B.* & *C.* 87. — *Joseph Ashton, Ann* his wife, and their three children, were removed by an order of two justices from *Stourton to Stow*. Upon appeal, the Sessions quashed the order, subject, &c. The pauper, three weeks after *May-day* 1820, took a house and land in the appellant parish at the rent of 15*l.* for one year, from the preceding *May-day* to *May-day* 1821. And at *May-day* 1821 he took the same again, at the same rent, for the year then ensuing. The pauper resided in the house and occupied the land from the time he first hired the same till five months after *May-day* 1821, and paid the whole rent during the time he so occupied the said house and land. — ABBOTT C. J. I am of opinion that the Sessions have, in this case, mistaken the law. All that the act in question requires for the obtaining a settlement has been complied with. There has been a hiring of a house and land, for a whole year, at a rent exceeding 10*l.*, and there has been a *bonâ fide* occupation and payment of rent for more than a year. That satisfies the whole of the act. It has been contended, that the legislature must have meant the hiring, occupation, and payment, to be for the same year. If that had been their intention, it would have been easy to say, that the occupation and payment should be for *such* term. But as the words of the statute have been complied with, we cannot say that a settlement has not been gained on the ground of some supposed intention of the legislature. — BAYLEY J. Considering the state of the law before the act in question passed, the words of that act, and the decision of this Court, in *Rex* v. *North Collingham* (*a*), I think that we are bound to say, that a settlement was gained in *Stow*. Before the passing of that act, it was not necessary that a tenement should be hired for any specific period, the mere occupation for 40 days of one or more tenements together of the annual value of 10*l.* sufficed. Then came the 59 *G.* 3. *c.* 50., requiring that the tenement should consist of a house or land, or both; that it should be hired for a year, occupied for a year, and that the rent should be paid for a year. All those requisites have been literally complied with, and the case of *Rex* v. *North Collingham* decided, that the taking need not be of one entire tenement; and I collect from that case, that the Court did not think it necessary, that where there are several tenements the holding of all should commence at one and the same time. And this is a reasonable construction of the act; for suppose a man to hire at *Michaelmas* land for a year, at the rate of 9*l.*, and, in like manner, to hire at each quarter of the year land of the same value, and to occupy the whole and pay the rent for five years, unless the occupation under the different hirings can be connected, it would be difficult to say that he ever occupied a tenement of 10*l. per annum* for one whole year. That, surely, would be a very unreasonable construction. I am, therefore, of opinion that the occupation under the different hirings stated in this case may be connected, and that the pauper thereby gained a settlement in *S.* — HOLROYD J. I think that a settlement was gained by the renting a tenement, stated in this case, connected with the other circumstances of occupation and

A pauper three weeks after *May-day* 1820 hired a house and land in the parish of S., for a year, from the preceding *May-day*, at the rent of 15*l.*, and at the expiration of that time hired it again for another year at the same rent. He occupied the premises from the time of the first hiring until six months after the second hiring, and paid the rent during the whole period calculated from *May-day* 1820: Held, that he thereby gained a settlement in S., for that the occupation under the different hirings might be connected so as to make an occupation for one whole year within the meaning of the 59 *G.* 3. *c.* 50.

(*a*) *Ante*, pl. 190.

payment of rent. We are required to put a construction on a restrictive act; but even if that were not so, I should think that the words of it have been complied with. If it had been intended that the occupation should be for the same term as the hiring, the legislature would probably have introduced the words, *for the said term*. It seems to me, that the words "nor unless" have been used in order to divide the sentence, and to exclude the construction now contended for on behalf of the appellants. The dicta as to the decisions on the 8 & 9 *W.* 3. *c.* 30. are not applicable to this case; that statute requires that the servant shall be hired for a year, and continue and abide in the *same* service for a whole year; there was, therefore, strong ground for supposing that the legislature meant the service which the party was hired to perform, viz. a yearly service. But the statute now before us does not require that the occupation shall be for the same term as the hiring. — LITTLEDALE J. Upon the strict words of the act, I think, that a settlement was gained in *S.*, but, at the same time, I cannot but think the meaning of the legislature extremely doubtful. — Order of Sessions quashed.

The pauper, who rented a farm in C., assigned it to P., upon trust, to cultivate it and pay the pauper's debts, &c. The lease expired in 1817, no settlement of accounts took place, but *P.*, without the authority of the pauper, then hired a house in H., at the yearly rent of 18*l.*, to which the pauper and his family removed, and they resided there for more than two years. The pauper never paid any rent or taxes, but P. was rated and paid the rent and taxes: Held, that the pauper gained a settlement in H. by the occupation of the house. The owner of the house died before the appeal was heard, and a

192. *Rex* v. *Chediston*, *E. T.* 6 *G.*4. 4 *B. & C.* 230. — Upon an appeal against an order of two justices for the removal of *S. E.*, his wife and eight children, from the parish of *H.* in the county of *S.* to the parish of *C.* in the same county, the Sessions confirmed the order, subject to the opinion of this Court on the following case: The pauper *S.* (whose original settlement was allowed to be in *C.*, and who occupied a farm there in 1809, at an annual rent of 300*l.*) assigned over his farm for the remainder of his term, together with his farming stock and crops, to his brother-in-law *P.* upon trust, to cultivate the same during the remainder of the term; and, at the expiration of the lease, to sell the stock and crops for the payment of his (the pauper's) debts, and then, upon trust, to pay over the balance, if any, to him. *P.* acted under the trust of this deed until *Michaelmas* 1817, when the lease expired, but no final settlement of accounts took place, and nothing was paid to the pauper, his property, as stated by *P.*, not being sufficient to pay his debts. At *Michaelmas* 1817, *P.*, not having any authority from the pauper to do so, and, without his knowledge, hired a house in *H.* of the value of 18*l.* a year, of one *H.* (since deceased), in which *S.* and his family resided. Some of the furniture belonged to *S.* and some to *P.* The house was much larger than was required by *S.*, and was taken by *P.* because he could not procure a smaller one. *S.* never paid rent for the house, nor parish rates, nor taxes; they were all paid by *P.*, who was assessed in the parish rate and in the tax collectors' assessment for the house. The pauper and his family continued to reside in the house till *Christmas* 1819, when *P.*, without any notice, directed the pauper and his family to quit the house, which they did. *P.* stated, that he considered *S.* responsible to him for the rent, but when he (*P.*) hired the house, he did not think he should get the rent. It was also proved by a witness, that, in the course of a conversation which he had with *H.*, the deceased owner of the house, *H.* stated, that he had let his house to *S.*, and that, upon witness expressing some doubt as to *S.*'s responsibility, *H.* told him, that the rent was guaranteed by *P.* This evidence was objected to by the counsel for the respondents, but was admitted by

the Court. — BAYLEY J. It appears to me on this state of facts, that there was sufficient *coming to settle* on a tenement in the parish of *H.* to give the pauper a settlement in that parish. The assignment to *P.* dispossessed the pauper of all right to reside on the farm, and gave *P.* the complete control over it. Under these circumstances *P.* took the house in question, clearly, not for his own purposes, but as a residence for the pauper, who removed to it with his family. It is stated, indeed, that the house was larger than *S.* wanted, and that *P.* put some of his own furniture into it, but *S.* had the exclusive occupation; and whether *P.* hired the house as agent for *S.*, or whether he hired it for himself and underlet to *S.*, still the latter was tenant. There may be a difficulty in saying that *P.* was agent, but then it was clear that *S.* was tenant at will to him; and *Bedworth* v. *Fillongley* (*a*) and *Rex* v. *Lakenheath* (*b*) are decisive authorities that such a tenancy is sufficient to confer a settlement. In the latter of those cases, *Abbott* C. J. says, that the pauper gained a settlement because he occupied in his own right, and not as a servant. Here *S.* clearly occupied in his own right, for *P.* took the house expressly as a residence for *S.* and his family. — HOLROYD J. I am of opinion that a settlement was gained in *H.* The pauper occupied the house there by permission of *P.*, who hired it for that purpose. That occupation continued upwards of two years, and had a burglary been committed in the house during that period, it must, in an indictment, have been described as the dwelling-house of *S.* The case contains no statement of any occupation by *P.* *S.* might have maintained trespass if his possession had been invaded, and that makes him, at least, tenant at will to *P.*; and then *Bedworth* v. *Fillongley* and *Rex* v. *Lakenheath* are in point. It is said, that in the former the pauper could not be turned out because he had sown the land, but it appears that he had sown it with his brother's corn; it is therefore difficult to understand how that could vary his rights, and no such argument can be urged against the authority of *Rex* v. *Lakenheath*. The order of Sessions must, therefore, be quashed.—LITTLEDALE J. concurred.—Order of Sessions quashed.

witness proved a declaration made by him during the period when he occupied the house, that he had let it to him, and that *P.* had guaranteed the rent. — *Quere*, Whether this declaration was properly received in evidence?

(*a*) *Ante*, pl. 174.

(*b*) *Ante*, pl. 157.

IV. *Of the Value of the Tenement.* (*c*)

See Stats. 59 *G.* 3. *c.* 50. — 6 *G.* 4. *c.* 57.

193. *South Sydenham* v. *Lamerton*, *T. T.* 3 *G.* 1. *MSS.* — *B.* died possessed, for a term of years, of a small cottage in *S.*, determinable on the death of her daughter, an only child, who was married to one *Willis*; who, on the death of *B.*, entered in right of his wife, but did not take out letters of administration to *B.*, but lived there and had two children. Twenty-five years afterwards he went with his wife and children into the parish of *L.*, and there hired a small messuage and several closes for 60 years, if they should so long live, at the full rent, which was 7*l.* 10*s.*, in the said parish of *L.* The whole tenement was worth 13*l.* 10*s.* a year; but part of it (viz. 6*l.* *per annum*) lay in the parish of *A.*, and not in the parish of *L.*, but the whole was one entire messuage. The order removed them to *S.* It was argued, that though *E.*, the

An entire tenement of the *value* of 10*l.* a year will gain a settlement, although it lies in different parishes.
S. C. 2 Sess. Cases 198.
1 Str. 57.
10 Mod. 388.
Sett. & Rem. 79.
Cald. 139.

(*c*) In the case of Rex v. St. Pancras, T. T. 4 G. 4. 2 B. & C. 122., it was decided that a settlement may be gained by being rated, and paying parochial taxes in respect of a tenement being above the annual value of 10*l.* See stat. 59 G. 3. c. 50. but see 6 G. 4. c. 57. by which the 59 G. 3. is repealed.

daughter, had no title in law to the cottage of her mother, yet she had a title in equity, which was sufficient to make a settlement; and that hiring the messuage in *L.* of the value of 7*l.* 10*s.* *per annum* did not gain a settlement therein. If a man take land of 8*l.* *per annum* in one parish, and land of 8*l.* *per annum* in another, it does not gain him a settlement in either parish.—PARKER C. J. As to the settlement in *S.*, if the other settlement is a good one the order must be quashed; because, though he has a right to live in both, yet he cannot be sent from one to the other. If a man hire a house at a small rent, and pay a fine, yet if the house be worth 10*l.* *per annum* it makes a settlement; for the settlement depends on *the value* of the tenement, not of *the rent:* this house and land is worth above 10*l.* a year, and one entire messuage, but in two parishes. But there may be another consideration, where it is one entire tenement as this is, and where two different tenements; for the reason of the statute is this, that a man who is entrusted with a tenement worth 10*l.* a year, is of such credit, and must have such a stock as make him not likely to become chargeable to the parish; and therefore it would be very hard that a man who has sufficiency enough to be trusted with a lease worth 13*l.* a year should not gain a settlement by it.—EYRE J. took it to be within the letter and intent of the law, that a man who is capable of renting a tenement of 10*l.* a year should be settled in that parish.—PRATT J. The mischief recited by the statute, and intended to be prevented, is the vagrancy of poor persons, who used to come into parishes where there was the best stock; and the statute describes who are intended by those poor, *to wit*, such persons as are not capable of hiring a tenement of 10*l.* a year. Now this man's sufficiency is not the less because 6*l.* *per annum*, part of the tenement, is in a different parish.—So PER CURIAM: The order must be quashed, his settlement being in *L.* (*a*)

A farm rented at 14*l.* a year by two persons jointly, but the rent paid, the stock stinted, and the profits taken separately by each, is not a tenement of sufficient *value* to each to enable either of the tenants to gain a settlement.
See Marden *v.* Barham, *post*, pl. 197.

194. *Croft* v. *Gainsford*, *Durham Assizes*, 7 *G.* 2. EDITOR'*s* *MSS.*—Two justices removed *Mary Reed* and her four children from *G.* to *C.* The Sessions, on appeal, stated the following case, which was submitted to the opinion of EYRE C. J. and MR. JUSTICE REEVE at the next assizes for the county.—*Samuel Reed* lived in the parish of *G.* for several years; and he, together with one *William Soleby*, about eight years ago, took a farm of Mr. *E.*, of *G.*, viz. two closes at *G.*, at 14*l.* a year, for one year: Mr. *E.* would not let the premises to one of them singly: they continued one year upon the farm, each of them paying his part of the rent for the first half-year, and to the last half-year *Soleby* paid his rent to *Reed*, who paid the whole to Mr. *E.*, the landlord. The hay was divided between *R.* and *S.*, and the pasture equally stinted by their several stocks. *R.* lived at *G.* till his death, but had no certificate when he came to *G.*, and he left a widow and four children, who were the paupers removed by the order above mentioned. This case was argued at the bar of the court before the Judges of Assize; and they were of opinion, that this renting did not gain a settlement in *G.*, because the statute of 13 & 14 *Car.* 2. *c.* 12. expressly requires that a man shall rent 10*l.* a year before he acquires a settlement in such parish, and hath enjoined it as a qualification which must be com-

(*a*) S. P. Elsted *v.* Hollibourne, *ante*, pl. 165.

plied with; for the legislature in passing the act had a regard to the ability of a person coming into the parish by renting a tenement of 10*l.* a year; and considered, that a person of that substance would not, in all probability, bring a charge upon the parish. It is plain, from the state of the case, that the landlord did not think either of them of sufficient ability by himself to answer the rent to him, and for that reason refused to let to one of them singly. It further appears, that each of these tenants paid his rent severally, and therefore each of them was tenant of only 7*l.* a year; and if the law should be otherwise, the inconveniences arising from it would be intolerable; for if 40 persons, for the same purpose, were to rent a tenement of this value, each of them would be entitled to a settlement; the manifest design of the statute would be thereby eluded; and the parishes would be loaded with poor. For these reasons they held the woman and her children to be settled at *C.*, and not at *G.*

A house of the *value* of only 6*l.* 10*s.* a year, taken at the rent of 10*l.* a year, under a covenant that the landlord should make new buildings, but which were, in fact, never made, is not a *tenement* of 10*l.* a year.

195. Southwold v. *Yokeford, H. T.* 13 *G.* 2. 2 *Burr. S. C.* 140. —*J. H.* had gained a legal settlement at the parish of *Y.* He afterwards hired a house in *S.*, by agreement, in writing, in the words following, to wit: "Memorandum of an agreement between "*John Block*, of *Hinton*, of the one part, and *J. H.*, of *Y.*, on "the other part, witnesseth, that *John Block* aforesaid doth let "unto *J. H.* all the house belonging to him, being in *S.*, at the "yearly rent of 10*l.*, with all the land thereunto belonging: the "said *John Block* is to build a stable convenient for the house, also "a lading for washing, and to sink a cellar, and to put up a stove-"chimney in the little room. All this to be done between this "and *Michaelmas* next. The said *Block* is to bring as many flags "as will cover the said lands, in order to make it a good convenient "bowling-ground; he being at the charge of bringing and ground-"age, and the said *J. H.* at the cutting and laying. The said "*J. H.* to have the house, with the premises, for three years, or "five, as he shall think proper; and to come in at *Midsummer* "next. The rent to be paid half-yearly, viz., 5*l.* at *Lady-day*, and "the other half at *Michaelmas*; and all the rent to be cleared off "at leaving off the premises. The said *John Block* to be at the "charge of a handsome sign, and to get the house licensed: but "the said *J. H.* to be at the charge of the licence." The house and premises before and at the time of making the articles above recited, were never worth nor let for above 6*l.* 10*s.* *per annum*; and none of the articles above said were performed, by which the landlord might have made it worth 10*l.* a year. *J. H.* did not lodge one night in the house; but his wife and children lodged there five nights, and no longer: his goods were in the house above 40 days, until they were taken and sold upon an execution: his wife and family continued in the town, and kept the key of the house till *Michaelmas.*—LEE C. J. The statute of 13 & 14 *Car.* 2. c. 12. gives power to the justices to remove a person coming to settle in a tenement under 10*l.* a year: now here the justices have expressly returned, as a fact, that this tenement was only of the value of 6*l.* 10*s.* a year. Indeed they say, *if* the agreed improvement had been made it might have been worth 10*l.* a year; but even this is merely conjectural: the fact returned is, that it is only worth 6*l.* 10*s.*—PAGE J. looked upon this state of the case as meant to be the true one; and said, he was clear as to the merits;

that the material thing was *the value* of the tenement, not the rent reserved; and he was as clear, that this is not a tenement of 10*l.* a year; for both at the time of the agreement, and also at the time of the removal, the value of it was but 6*l.* 10*s.* a year: and the mere *covenant* to build is not sufficient to bring it within the intent of the act.—PROBYN and CHAPPLE Js. concurred in the opinion, that this was not a tenement of 10*l.* a year value, and that *the value* must be estimated as at the time of the letting, or at least of the removal; and the mere covenant to make improvements which were never made could not alter the case.

A farm taken at 10*l.* a year, although it had only been let for, and was worth no more than 7*l.* a year, is a tenement of sufficient *value*, unless it be expressly found that the taking was *fraudulent*. See Kniveton *v.* Tessington, *post*, pl. 198.

196. *Weston* v. *Kirton*, *T. T.* 14 & 15 *G.* 2. *Burr. S. C.* 166.—*J. F.* being settled at *W.* took a farm of 10*l.* *per annum* for one year at *K.*, which had been let at that rent for five or six years then last past; but before that time was let at 7*l.* a year only. He also took a bye-tack of 20*s.* a year at *K.* for one year, and he and his family continued there upon the said tenement 10 months. When he first took and entered on these tenements he was not of ability to stock them, having only two cows, two pigs, and one horse, all of which are not sufficient stock for such tacks; but he had household furniture, coppers, brewing vessels, and other utensils for brewing ale to sell; and had a licence for that purpose. Before his entry to the 10*l.* a year farm, he was told by the former tenant that such tack was too dear at 10*l.* a year. To which he answered, that he did not regard the dearness; for as it was 10*l.* a year it would gain him a settlement, and put an end to a dispute there was between two towns about his settlement; but he desired such former tenant to take no notice thereof to any body. The Sessions confirmed the order of two justices removing *F.* and his family from *K.* to *W.*—LEE C. J. The consideration of this Court must be, Whether the Sessions have stated a case that justifies the removal of this man and his family from *K.*, by showing that the tenement he rented in *K.* was under the value of 10*l.* a year? We are not to determine the matter upon the evidence given to the Sessions, but upon the facts stated and the adjudication made by them. Here they have stated circumstances, but they have not explicitly stated the real value, nor have they adjudged any fraud. The value of the man's stock is not material; the value of the tenement is the point. The act requires the renting a tenement of the yearly value of 10*l.* They state that he did take a tenement of 10*l.* a year for a year at *K.*, indeed they add, that it had been let at 7*l.* a year formerly; but it might be then worth more, or might have been afterwards improved: it had for five or six years been let at 10*l.* *per annum*. They likewise say his stock was not sufficient for 10*l.* a year; but the quantity or value of his stock does not alter the value of the tenement. And they also state a conversation between him and the former tenant, who told him it was too dear; to which he answered, that as it was 10*l.* a year it would gain him a settlement, and put an end to a dispute about his settlement; and desired the former tenant to take no notice of the matter to any body. Yet they do not adjudge that there was any fraud, nor do they state that it was under the value of 10*l.* a year; and the evidence rather proves it to be of that value. They must expressly state that it is fraudulent, or else we cannot take it to be so: and we must take the case stated to be the whole case. He was,

therefore, of opinion for quashing both orders; and the three other Judges concurring, the rule for quashing both orders was made absolute.

197. *Marden* v. *Barham*, *M. T.* 25 *G.*2. *Burr. S. C.* 311. — The pauper *T. N.* and one *J. D.* jointly hired a house and land at *M.* for a year at 16*l. per annum*, (which had been rented at 20*l.*,) and jointly occupied the house and tilled the land for the one year; and at their joint expence tilled and sowed the land; and jointly paid the rent, *i. e.* each the like sum. — THE COURT were unanimously of opinion that this was not a renting of 10*l.* a year in either of the tenants, and therefore that neither of them could gain a settlement thereby.

A house and land hired at 16*l.* a year jointly by two persons, is not such a tenement to each of them as will gain a settlement.

See Croft v. Gainsford, *ante*, pl. 194.

198. *Kniveton* v. *Tissington*, *E. T.* 33 *G.*2. *Burr. S. C.* 499. — *I. W.*, being settled at *T.*, did, upon *Lady-day* 1749, take and enter upon a farm at *K.* of the yearly value of 8*l.* of Mr. *Hanson*, vicar of *K.*, to hold from *Lady-day* 1749 to *Lady day* 1750: at the same time he, with one *T. H.*, jointly took and entered upon another farm in the same liberty of *T. D.*, to hold from *Lady-day* 1749 to *Lady-day* 1750, of the yearly value of 3*l.* 15*s.* At the time of taking the said farm of 3*l.* 15*s.* it was agreed between the said *I. W.* and *T. H.*, that *T. H.* should have and take one half of the corn and hay to be cut from the said farm of 3*l.* 15*s.* rent; that *I. W.*, after *T. H.* had taken and carried away his half part of the said corn and hay, should be possessed of and occupy the whole farm of 3*l.* 15*s.* rent till *Lady-day* following, paying to *H.* 4*s.* for his share of the said farm: *T. H.*, on or before the 1st day of *October* 1749, took and carried away one half of the hay and corn; and *J. W.* thereupon immediately took and continued the possession of the whole farm till *Lady-day* 1750, and paid the 4*s.* to *T. H.* for the same. — THE COURT unanimously held, that this tenement thus rented by the pauper in *K.* was under the yearly value of 10*l.* The act of parliament fixes the yearly value at 10*l.*; and *the value* must be estimated by *the rent* (*a*); and always is taken to be according to the rent: and here the rent is 8*l. per annum*, and the half 3*l.* 15*s.*; which two rents taken together do not amount to 10*l.* Indeed he was to pay *T. H.* 4*s.* for the advantage he was to have after the crop was off; but an agreement of this sort between the two joint-tenants cannot be considered as a rent.

The *value* of the tenement shall be estimated by, and taken according to the *rent*, if no other *evidence of value*, appear; and therefore a sole tenancy in a house of 8*l.* a year, and a joint tenancy in land of 3*l.* 15*s.* do not form a tenement of 10*l.* a year.

199. *Llandverras* v. *Northop*, *M. T.* 7 *G.*3. *Burr. S. C.* 571. — In 1764 *E. H.*, the father of the paupers, being settled in *N.*, rented a tenement of 10*l. per annum* value in the parish of *L.*, and paid the rent to the landlord: he lived above 40 days in a part of it worth 40*s.* a year only: and let the rest to under-tenants. — THE COURT of King's Bench was unanimously of opinion that *E. H.* had taken a tenement of *the value* of 10*l.* a year, and was the tenant all the time. It was not necessary for him to occupy it himself; for when the 13 & 14 *Car.* 2. *c.* 12. speaks of persons coming to settle in a tenement under the value of 10*l.* a year, and does not require a person renting a tenement above that value to occupy it, it is enough if he rent it, and reside 40 days in the

A tenement of 10*l.* a year taken without fraud will gain a settlement, although the tenant live only in one part of it worth 40*s.* a year, and underlet the remainder to different tenants. S. C. Bl. Rep. 603.

(*a*) Sed vide *ante*, South Sydenham *v.* Lamerton, pl. 198. and *post*, Rex *v.* Bladale Kirkham, *post*, pl. 202. *contra*.

parish, and if it be a *bonâ fide* taking, he may underlet it as he pleases.

A tenement of the *value* of 10*l.* a year, taken for five months at the gross sum of 4*l.* for the five months, will, by a residence on it of 40 days, gain a settlement. But see 59 G. 3. c. 50.

200. *St. Matthew's, Bethnal Green*, v. *St. Botolph's, Aldgate*, *H. T.* 7 *G.* 3. *Burr. S. C.* 574. — *J. F.* hired a dwelling-house in the parish of *A.* of *W. W.*, for five months, during the remainder of a term which *W.* had therein, and for which *F.* agreed to pay *W.* the sum of 4*l.*: *F.* came with his family to settle in the house, and remained in the same the five months and a short time over: the house was, at such time of *F.* taking and entering the same, worth, to be let, 10*l.* by the year. — LORD MANSFIELD: We are concluded from treating this tenement as being under 10*l. per annum* value by the finding of the justices, who have stated it as a positive fact, that, at the time when he took it, it was of the value of 10*l. per annum*: it was then worth so much, to be let. We are not upon the evidence of the value; if we were, perhaps, this might come a little matter short of the calculation, by about (*a*) 8*d. per* month. But the justices have concluded us by their finding. Clearly, the rent is not material; it is the value that is material. So is the case of *South Sydenham* v. *Lamerton* (*b*); and ASTON and HEWITT Js. concurred.

(*a*) Five months 4*l.*, 12 months 9*l.* 12*s.*

(*b*) *Ante*, pl. 193.

A public house taken at 10*l.* a year, though the landlord is to pay *all parish rates* and *charges* assessed thereon; is a tenement of sufficient value.

201. *Rex* v. *The Inhabitants of Framlingham* (*a*), *T. T.* 13 *G.* 3. *Burr. S. C.* 748. — *S. C.* verbally contracted and agreed with *S. H.* of *M.*, farmer, to hire of him, *H.*, a public house called the *Lamb*, at *M.*, with an orchard, yard, stable, and one half of the apples growing in the orchard, (being part of the farm in the occupation of *H.*,) at and *under the yearly rent of* 10*l.* payable half yearly: and it was at the same time agreed, *that all parish rates and charges* with which the premises should become chargeable, should be paid by *H.*, and not by *C.* the tenant. Soon after *H.* drew up an agreement in writing, with respect to the above hiring, in the words following, viz. "29th *July* 1765. Then "leat to *C.*, the *Lam* in *M.*, orchard and yards on the lower part of "the Hows, and the stall that belong to the cartlodg; the one half "of the apples to be the property of the said *S. H.*, and the other "part the property of the said *S. C.* The *rent is* 10*l. per* year of "lawful money of *Grate Briten*; and to pay the rent half yearly, that "is to say, at old *Lady* and old *Michelmes* day. 'Tis agreed, that "if in case *S. C.* give warning at a *Lady*, to leave the premecies "the *Michelmes* following; and likewise if *S. H.* give warning at a "*Lady*, to quit the primeces the *Michelmes* following; the said *S. H.* "do agree to the above mentioned words. As witness my hand: "*S. H.*" And brought the same to *C.*, to be signed. To which *C.* objected, on account of no mention being made in such written agreement, with respect to his being *exonerated from the payment of rates*: to which *H.* replied, "that is was an omission through "forgetfulness; but that he meant the contract should be UNDER-"STOOD in that manner." Which agreement appeared to the Court to be signed by *S. H.* only: but *H.* on his examination upon oath, declared, "that he believed *C.* signed a counterpart "thereof; but could not find the same, but had seen it about two "or three years since, according to the best of his remembrance "and belief." *C.* entered on the premises at *Michaelmas-day* following, and held the same for *four years* then next following, and *paid* the said *S. H.* the yearly rent of 10*l.* for each of the said years. And it further appeared upon the examination of *H.* upon

(*a*) And see *Rex* v. *St. Paul, Deptford*, *post*, pl. 208.

oath, and also of *C.*, that *C. did* NOT *pay any parish rates* for the premises, but that ALL *the parish rates* were *paid by H.*, for the *whole time* that *C.* occupied the premises, pursuant to *H.*'s undertaking and agreement with *C.* at the time *C.* first contracted for the premises. And it further appeared on the respective examinations of *H.* and *C.* upon oath, that in case the said *C.* had paid the parish rates aforesaid, *H.* would not have expected to be paid, nor would *C.* have consented to pay the said yearly rent of 10*l.* for the premises. — LORD MANSFIELD and the rest of the COURT were of opinion, that this was a good taking a lease of a tenement of the yearly value of 10*l.*, within the intention and meaning of the act of parliament. It turns upon the credit given to the person. Now here credit is given to this man, for 10*l.* a year. He contracted for it at that rent; and he paid that rent to his landlord for it. It was a *real and bonâ fide* taking a tenement of that yearly value.

A tenement under the value of 10*l.* a year, rented from year to year, which at any time during the occupation of the pauper becomes of the *value* of 10*l.* a year, will gain a settlement, although no alteration be made in the rent.

202. *Rex* v. *Bilsdale Kirkham* (*a*), *T. T.* 16 *G.* 3. 3 *Burr.* 528. — *T. W.* went from the parish of *B. K.* to *B. W.*, and there married *S.* the pauper, who then rented a tenement of 4*l.* a year, and he occupied the said tenement with her during his life. He afterwards died, leaving the said *S.* the pauper. Evidence was offered to prove that this tenement, at the time the man occupied it with his wife, was worth 15*l.* a year, though let at no more than 4*l.* But the Sessions rejected this evidence, and determined on the rent actually reserved; which being under 10*l.* a year, they adjudged that the pauper was not settled in the parish of *B. W.* by renting such tenement. — By LORD MANSFIELD: The justices have done wrong, in not receiving the evidence of the value of the tenement beyond the rent paid. Every lease from year to year begins afresh every year, and is, in point of law, a new demise. If the tenement was of the value of 10*l.* a year any year during the man's occupation of it, he will thereby gain a settlement. — The case was sent back to the Sessions to receive evidence of the value; which, being certified as above, the Court held it a good settlement.

A pauper, tenant at will, underlets, and the landlord afterwards receives rent sometimes from the pauper, sometimes from the under-tenant. The pauper, after the underletting took another tenement, which made up 10*l.* Adjudged, that he continued tenant of the first tenement, and thereby gained a settlement. S. C. Cald. 498.

203. *Rex* v. *Maghull*, *E. T.* 24 *G.* 3. EDITOR's *MSS.* — *H. G.* took a tenement in *Maghull* consisting of a cottage and an acre of land, of the value of 7*l.* *per annum*, by verbal agreement, of Lord *S.* for eleven years, and was also to pay the taxes. *H. G.* (the pauper) let this tenement by a like agreement for his whole term to *W.* at the same rent and terms; and it was agreed between the pauper and *W.* that the latter should pay his rent to Lord *S.* The cottage was, at the time of this letting, in the occupation of *E. L.*, who had taken it of the pauper at 3*l.* a year. *W.* entered into possession of the land, and let the cottage to *L.* at the same rent of 3*l.* a year. The pauper some time afterwards rented a tenement for 75*l.* in *Melling*; and resided on it three years: then, being sold up by his landlord and distressed in his circumstances, he returned in 1780 to *Maghull* (having given up the tenement in *Melling*) with only a few household goods, and took a cottage of *W. Wood* of the value of 3*l.* a year, on which he resided above a year. *W.* was taken for tenant to Lord *S.* for the whole premises in *Maghull*, and secured to his lordship the rent for 1778 and 1779 by the joint bond of himself and the pauper. *W.* also received from *L.* one year's rent of the cottage,

(*a*) And see Rex v. Aston, *post*, pl. 211.

distrained her for another, and the third year she had no goods to distrain on. The pauper having by an artifice got *W.* from home, entered without his consent on the acre of land, and began to mow it. *W.* on his return, by the desire of his wife, who was the pauper's sister, permitted him to make the hay; and the pauper continued in possession of the land more than 40 days, whilst he resided in the cottage which he took from *W. Wood;* but he never received any rent for the cottage occupied by *L.* The pauper in 1780 paid Lord *S.*'s agent 3*l.* 3*s.* in part of the rent for that year. The agent, considering him as having obtained the possession fraudulently, but being glad to get the rent from anybody, the pauper and *W.* entered into a joint security to Lord *S.* for the residue of the rent for 1780, which was never paid. The Sessions held the pauper to be settled in *Maghull.*— COCKHILL showed cause: He said, the underletting of the tenement of 7*l.* made no difference, for which he cited *Rex* v. *Llandverras.* (*a*) The pauper continued answerable for the rent; Lord *S.* considered him as his tenant, and accepted rent, and took security from him. As to the circumstance of his obtaining possession again by fraud, it was entirely immaterial, since it was not necessary that he should continue in the possession. — FIELDING *contrà*, observed, that the taking of the 7*l.* a year was by a parole agreement for 11 years, and therefore amounted only to a tenancy at will; that an estate at will was undoubtedly sufficient to gain a settlement; but it appeared from the circumstance of the case, that the will was determined before the taking of the 3*l.* a year from *Wood.* When the pauper took an under-tenant, the assignment destroyed the estate at will. Lord *Coke* says (*b*), that if tenant at will grant his estate, the grant is void, but the will is determined. If the original taking was then out of the question, it would be incumbent on the other side to show a fresh taking, which it was impossible to make out. The bond could not amount to *a taking;* it was only *a security;* or, at most, being joint, would make the pauper tenant only of *a moiety*, which was not sufficient in value. — LORD MANSFIELD: This case is very particularly circumstanced. It never did occur before, and probably never will again, and can never be an authority. It would certainly be difficult to show that a new lease was granted; but I take it the other way: and I am of opinion the old one never was determined. Lord *S.* never gave the pauper up as tenant, and he continued liable for the rent. — BULLER J. There is something of a contradiction in the case, stating that the other man was taken as tenant; but it does not follow that the pauper was given up. Lord *S.* meant to continue both him and his under-tenant liable. — Order confirmed.

(*a*) *Ante*, pl. 192.

(*b*) Co. Lit. 57. a.

A fraudulent renting of a tenement of 10*l.* a year, as taking a farm of that value without being able to stock it, will not gain a settlement.

204. *Ashburton* v. *Woodland*, *E. T.* 26 *G.* 3. 1 *T. R.* 261. — The pauper *T. G.* was a day-labourer, and settled in the parish of *W.* by servitude. He went into the parish of *A.*, where he rented a cot-house at 1*l.* 12*s. per annum*, in which he resided. While he so rented it, on or about *October* 1782, he took a meadow for one year in *W.*, at the rent of 10*l.* 10*s.* of one *M. N.* (*c*), who resided in the said parish, and rented this together with other

(*c*) At a former Sessions the evidence of *M. Northcote* was rejected; but the Court of King's Bench being of opinion that his testimony was admissible, sent the case down to be restated, and to receive his evidence.

ground of Mrs. *T.*, and paid the poor-rates thereof, being by covenant to be reimbursed by the said Mrs. *T.*: the pauper did not stock it at all, but at *Christmas* let the grass for 3*l.* 3*s.* to *E. B.* (without the privity of *N.*) until the *Lady-day* following. *B.* stocked it, and paid the rent to *G.*, who afterwards, but not on same day, paid *N.* his landlord 5*l.* 5*s.* for a half-year's rent: several persons had offered to take the grass of the pauper before he let it to *B.*: the pauper laid up the ground for mowing, and then let the shred or mow to *M. N.* for 5*l.* 5*s.* and the after-grass for 2*l.* 2*s.* at the end of the year, when he came to settle accounts with *N.*, the pauper received 2*l.* 2*s.* on balance of accounts, after allowing 5*l.* 5*s.* to *N.* for the half year's rent then due: *N.* did not apply to the pauper to take this ground, but the pauper applied to him, and he readily trusted him; assigning as reasons, that he believed him to be an honest man, though a day-labourer, having known him upwards of 20 years, and that he had heard, just before he let him the estate, that the pauper had received a legacy from a brother-in-law equal to the year's rent: *N.* had frequently made a practice to take ground, and let it out again in parts and parcels: three years previous to the taking of the above meadow the pauper applied to the parish officers of *W.* for relief, on account of sickness, and was relieved by them: about half a year after the expiration of the term for which he took this meadow, his wife applied, and received pay of the parish of *W.*, he then being sick in the *Exeter* hospital: he made a fresh agreement for taking another field of *N.*, at 13*l.* *per annum*, on the morning of the day he was examined before the justices touching his settlement. And the Sessions were unamiously of opinion, that the taking of the said field was fraudulent. — WILLES J. delivered the opinion of the Court, that the conclusion of the justices, upon the facts stated in this case, that it was a fraudulent taking, was right, and the order of the Sessions, confirming the order of two justices by which *G.* and his wife and children were removed from *A.* to *W.*, was affirmed.

Services may be considered as *rent* in estimating *the value* of the tenement.

205. *Simonburn* v. *Melkridge* (*a*), *H. T.* 27 *G.* 3. 1 *T. R.* 598.— *J. P.*, the grandfather of the pauper, *J. P.*, acquired a settlement in *M.* by renting a tenement of 10*l.* a year; and the said settlement was the derivative settlement of the pauper. *J. P.*, after his so acquiring a settlement in *M.*, having then a family, was appointed to be A HERD to several persons having a right of common upon a large and extensive common or waste lying in the township of *H.*, in the parish of *H.*: He accordingly entered upon his said employment, and removed with his family to a house situate upon the said common, where he resided several years, and until his death: as a reward for his said services, he was allowed the exclusive enjoyment of the house, and of a parcel of meadow-ground adjoining thereto; and the house and ground were worth 20*l.* a year. —THE COURT thought no doubt could be entertained upon the question: for they said, that the service of the pauper was equivalent to his paying rent; and that the commoners, instead of giving him so much money by way of wages, had permitted him to occupy this house: that the case expressly stated, that the pauper had the exclusive enjoy-

(*a*) See Rex *v.* Minster, *ante*, pl. 182; Rex *v.* Kelstern, *ante*, pl. 185.

ment of the premises in question, which were worth 20*l.* a year: that possession could not be stated in stronger terms; and that the case of *Rex* v. *Fillongley* (*a*) was much stronger.

(*a*) 1 T. R. 458.

Land of the value of 6*l.* 10*s.* a year, on which the pauper built a *post-windmill*, and which, by agreement with his landlord, he was to take away on quitting the premises, is not a tenement of sufficient value, although he let the mill for 9*l.* a year.

206. *Rex* v. *Londonthorpe*, *T. T.* 35 *G.* 3. 6 *T. R.* 377. — *J. T.*, miller, took a tenement in the hamlet of *S.* at 6*l.* 6*s.* a year, in which he resided near three years, and the greater part of that time rented of the lord of the manor of *S.* a piece of waste ground in the hamlet, at the yearly value of 10*s.* 6*d.*, upon which he had the privilege of building a post-windmill, and which he was at liberty to remove at pleasure. He, accordingly, built a post-windmill upon that ground, at the expence of 120*l.*, and worked it for about three quarters of a year, but rented the ground for two years and a half, the greatest part of which time the mill was standing thereon. The mill was constructed upon cross traces, laid upon brick pillars, but not attached or fixed thereto, which is the usual mode of building mills of that nature. And the mill was considered as the property of the tenant. He let it to one *J.* for a quarter of a year, at the rate of 9*l. per annum*, during which time the pauper resided in the said tenement of the rent of 6*l. per annum*. The pauper afterwards sold the mills as a chattel interest, and it was taken away by the purchaser without any interruption of the landlord; no rates were ever paid or demanded for the mill, or the ground on which it stood. The question for the opinion of the Court is, Whether the pauper, by living upon his tenement of 6*l.* a year, and renting the piece of land at 10*s.* 6*d.*, and afterwards building and working the mill for the time aforesaid, and letting the same for a part of the term as above stated, was to be considered as holding 10*l.* a year, and to have gained a settlement, either in respect thereof, or as having purchased an interest in the said hamlet of the value of 30*l.*, and residing in the said hamlet at the same time for above the space of 40 days? — LORD KENYON C. J. There is no doubt but that the taking of a windmill attached to the ground, of the value of 10*l.* a year, will confer a settlement; a *præcipe* will lie for such a windmill. The taking of a rabbit-warren was also held to give a settlement, because it was a tenement; and so in the case of the land-sale colliery. But this windmill, as described in the case, is nothing but a chattel. And if, in questions of this kind, we were merely to consider the ability of the pauper, without, at the same time, considering whether he rented a tenement, we should abandon the statute altogether, and the decisions upon it. It might as well be said that an iron maltmill would give a settlement. This post-windmill was the sole property of the tenant himself; and it was not fixed in the ground, but detached from it. But, in order to confer a settlement, it should be so connected with the land as, in legal contemplation, to fall within the description of a tenement. — GROSE J. This mill was a mere chattel, and was the property of the tenant, and not of the landlord: and it is no more a tenement than a large coffee-mill put up by the tenant in his house.

See the case of Rex v. Minworth, *ante*, pl. 145.

A tenement found to be of the value of 4*s.* a week, at all

207. *Rex* v. *Hellingley*, *T. T.* 48 *G.* 3. 10 *East*, 41. — *J. P.* (*b*) hired a house at *B.* by the week, paying 4*s.* a week for the same,

(*b*) One point made in this case was, that *J. P.* was a soldier, and therefore unable to gain a settlement by renting a tenement, but upon this point the Court gave no opinion.

and resided therein for three months. The house so hired and occupied by him is at all times of the year of the value of 4*s.* a week, if taken by the week; but is not of the value of 10*l.* *per annum* to be taken by the year. The question reserved was, Whether *J. P.* gained a settlement under the above circumstances?—LORD ELLENBOROUGH C. J. The Court is clearly of opinion, that no settlement was gained by the pauper in *B.* The words of the statute enable the justices to remove any person who "shall come "to settle in any tenement under *the yearly* value of 10*l.*," that is, upon a tenement, the value of which is to be estimated by its annual value, to be let by the year, at the time of the party's coming to settle upon it. It need not, in fact, be let for a whole year, it may be let by the week, or the day; but those lettings are only media for ascertaining the yearly value, if nothing appear to the contrary; but when it is expressly found that the tenement was not of the value of 10*l.* if taken by the year, it is impossible, by any reasoning, to make the matter more clear. Suppose, however, that it might be let every week in the year at 4*s.* a week, which would amount to 10*l.* 8*s.* and a fraction; I ask whether, in fair estimation, that would be of equal value with a tenement of the value of 10*l.* a year to let by the year? Whether the difference of 8*s.* and a fraction, to be made by 52 successive contracts, would be an equivalent for so much additional trouble and inconvenience? Nobody would hesitate to say, that such a tenement was not of the value of 10*l.* to be let by the year. But the estate, speaking of yearly value, means the value of the tenement to be let *by the year*.—GROSE J. agreed.—LE BLANC J. When the statute speaks of the *yearly* value, what else can be understood by that expression but the value to be let *by the year*? It has been held indeed by construction of the statute, that a settlement may be gained by taking of a tenement for less than a year, provided it is of an aliquot value, which would amount to 10*l.* a year. But in none of the cases where that has been decided did it appear, that the estimated value depended on the mode of letting by the week, or other shorter period than a year. But the letting at so much by the week or the month was merely taken as a criterion of the yearly value: and this is an answer to all those cases. Here, however, it is stated, that the value of 10*l.* within the year, depended on the taking being for a shorter period than a year, and no person would have paid that *yearly* value for it. If this then were allowed to confer a settlement, the next thing contended for would be, that a field, which nobody would take for 10*l.* a year, if it could be let out by the tenant for one night (which he might do to drovers of cattle on the road) at that rate, would confer a settlement. I am not disposed to extend the words of the act further than the cases have already gone.—BAYLEY J. This case is so clear, that I regret that the Sessions were prevailed upon to reserve it for our consideration. The question is, Whether the value of this tenement be 10*l.* a year? To ascertain that, the only fair criterion is, whether it would let at a single letting, without further trouble, for that sum; if it could be so let at a single letting, the landlord might reside elsewhere at a distance: but if it is to be let weekly, he must either reside upon the spot himself, and have so much additional trouble in letting it, or he must employ somebody else there, and pay him for his trouble: in

times of the year, if let *by the week*, but not to be of the value of 10*l.* a year, to be let *by the year*, cannot confer a settlement on the occupier by residing thereon for 40 days.

either case, part of the 10*l.* obtained within the year by weekly lettings would go either to compensate himself for his trouble, or in defraying the expence of his agent: besides, the risk of not being able to let it for three weeks in the course of the year, in which case the actual rent would be reduced under 10*l.* a year. The statute then, speaking of the *yearly* value, and the question being, whether the tenement were worth 10*l.* a year to be let at a single letting, without further trouble, and that being negatived by the case, it is clear that no settlement was gained by the pauper's occupation of it. — Order of Sessions confirmed.

Settling for 40 days upon a tenement, of the yearly rent of 10*l.*, the landlord paying rates and taxes, will confer a settlement upon the tenant.

208. *Rex* v. *St. Paul Deptford*, *H. T.* 51 *G.* 3. 13 *East*, 320.— Removal from *D.* to *G.*; order quashed, subject, &c. The pauper at *Christmas* 1807, rented a tenement of *E. B.* in *G.*, and resided upon it more than 40 days, under an agreement, by which it was stipulated that he should pay 10*l.* by the year to *B.* for the said tenement, and that *B.* should pay all taxes, rates, and charges whatsoever; which he did. The Court of Quarter Sessions were of opinion, that if the taxes, rates, and charges, usually deemed the tenant's taxes, are to be deducted from the 10*l.* which the tenant agreed to pay the landlord, the said tenement was not of the annual value of 10*l.*: but if those taxes are not to be deducted, the said tenement was of the value of 10*l.* The case was reserved, in order to bring under the revision of the Court the judgment in the case of *Rex* v. *Framlingham*. (*a*) — LORD ELLENBOROUGH C. J. If we were sitting to hear the case of *The King* v. *Framlingham* now argued, the argument might have weight; but it having been settled nearly 40 years ago, that the rent reserved (all fraud apart) is to be taken as the criterion of the value of the tenement, without reference to the payment of the rates and taxes by the landlord, we are not now at liberty to disturb that upon any speculative opinion. The tenant may be said to obtain credit for a tenement in one sense of the yearly value of 10*l.*; and I cannot say that the former decision is so directly against the words of the act as necessarily to be wrong. — GROSE J. It is better, *stare decisis*. The very case has been already determined. — LE BLANC J. If we were to decide against the former case, it would let in the deduction from the amount of the rent reserved, of every payment to be made by the landlord, which might have been thrown upon the tenant. The rule being settled otherwise, it is better to abide by it. — BAYLEY J. There is quite uncertainty enough in settlement cases; and when a point has been once decided, it is best to adhere to the decision. — Order of Sessions quashed.

(*a*) *Ante*, pl. 201.

The taking of a tenement which, by having been cropped by the landlord with clover and grass seeds when let to the tenant, was worth 10*l.* a year, but without that circumstance would have been of much less annual value, will confer a settlement.

209. *Rex* v. *Purley*, *T. T.* 52 *G.* 3. 16 *East*, 126.— The pauper occupied for a year a cottage and garden in *Sonning*, of the annual value of 4*l.*, and also held a piece of land for the same period, at the rent of 6*l.* 10*s.* for that year. This land had been cropped by the landlord with clover and grass seeds, previously to letting thereof to the pauper, and in consequence of its being so cropped, it was worth 6*l.* 10*s.* for that year; but had it not been so cropped by the landlord, it would have been worth only 2*l.* 5*s.* *per* year. — LORD ELLENBOROUGH C. J. The pauper occupied a tenement which, during that year, was, in fact, of the value of 10*l.*

how it became of that value is immaterial: it might have happened that the crop was worth more in that year.—Orders quashed.

210. *Rex* v. *Ringwood* (*a*), *E. T.* 53 *G.* 3. 1 *M. & S.* 381.—Removal from *T.* to *R.* Order confirmed, subject, &c. The pauper being settled in *R.* (*b*), rented a cottage in *T.*, for which he paid 2*l.* 2*s.* a year, and he had the use of a yard, for which he paid 1*l.* a year. Whilst he occupied this cottage and yard, he took nearly an acre of land in another parish, *at the rent of* 8*l.*, *from* Easter *to* October *following, for planting potatoes. The ground had been dug by the landlord for that purpose, and it would not have been let for more than half price if had not been dug.*—GROSE J. The only question is, whether the pauper came to settle on a tenement of the yearly value of 10*l.* Looking at the case, we find that he went to *T.* with his family, and resided there more than 40 days. As to the value of the tenement which he occupied during that time, it is expressly stated to be above 10*l.*; but it has been contended that the land which he rented from *Easter* to *October*, for planting potatoes, might be worth 8*l.* for that time, and yet not of that value for a year. That proposition I do not understand, and, therefore, cannot assent to it.—LE BLANC J. In this case the pauper rented a cottage in *T.*, at 2*l.* 2*s.* a year, during which time he also rented nearly an acre of land, in another parish, from *Easter* until *October*, for planting potatoes, at the rent of 8*l.*; which land had been previously dug by the landlord, and would not have been let for more than half that price, if it had not been so dug. All these premises taken together at the rent for which they were let, amount to above the value of 10*l.* But the question is, whether we are to reduce that value by taking the land, which was let for 8*l.*, at the rent for which it would have been worth to be let, if it had been in a different state; or, in other words, whether we are to deduct from the rent the value of the labour bestowed by the landlord on the premises before he let them. I think the Court must look to what was the value of the tenement at the time the pauper came to settle upon it, without considering by what means it became of that value. I agree with the gentlemen who have argued on the other side, that the value of the tenement increased by the labour bestowed upon it after the letting cannot be taken into the account; as if the pauper had taken it at the rent of 5*l.*, and had bestowed labour upon it to the amount of 5*l.* more, that would not have made a renting of 10*l.* But where the labour has been previously bestowed, so as to make the land fairly worth the rent at the time it is taken, the Court cannot separate the value of that labour from that of the land.—BAYLEY J. This is nothing more than a party taking land in a high state of cultivation, which has rendered it of the value agreed to be given for it at the time of

The renting of an acre of land at 8*l.* from *Easter* to *October*, for planting potatoes, (where the land had been previously dug by the landlord for that purpose, and would not have been let for more than half that price if it had not been dug,) was considered as a tenement of the yearly value of 8*l.* although the case stated that in a common way an acre of such land would not let for more than 2*l.*

(*a*) See Rex *v.* West Cramore, *ante*, pl. 153.

(*b*) The manner in which the settlement was gained in *R.* viz. by renting a tenement in *R.* of 10*l.* *per annum*, formed part of this case, and it was meant to be contended (the pauper having slept 40 nights in the parish of *R.* and 40 nights in another parish, during the tenancy, and having *slept* the last night but one of the tenancy in such other parish, and *passed the last night of the tenancy in his house at* R. *packing up his things without going to bed,*) that no settlement was gained in *R.*; but *per* Lord *Ellenborough* C. J. The Court will not enter into minute inquiries whether the pauper slept in the literal sense of the word, what will satisfy "*pernoctavit*" is sufficient.

the taking. Nor do I think that it would have been worth less if it had been taken for a whole year. It is argued, indeed, by the counsel, that if the pauper had taken it for a year, he would have had to dig it himself, and then it would have been of less value to him than what was given for it for a shorter period; but it does not follow, that if he had taken it for a year, he would necessarily have had to dig it. I think, therefore, that this tenement, coupled with the other property, amounts to a tenement of more than 10*l.* a year.—Order of Sessions quashed.

The value of a tenement, in respect of acquiring a settlement, is to be taken as of the time when the party comes to settle on it; hence where a man took a piece of land for 99 years at the rent of 2*l.* 2*s.* a year, on which he built two houses, each of the yearly value of 5*l.* 5*s.*, in one of which he lived, and let the other at 5*l.* 5*s.* a year: Held, that he did not thereby gain a settlement.

211. *Rex* v. *Aston*, *H. T.* 57 *G.* 3. 6 *M. & S.* 54.—On appeal against an order for the removal of *Jesson*, widow, from the parish of *A.* to *H.*; the Sessions quashed the order, subject, &c. The pauper was the widow of *T. J.* the younger, deceased, who was the son of *T. J.* the elder. In 1800 *J.* the elder took a piece of land in *H.* for 99 years, at the rent of 2*l.* 2*s.* a year, and built on it two houses, each of the yearly value of 5*l.* 5*s.*, in one of which he lived, and let the other at 5*l.* 5*s.* a year. When the first was finished he went to live in it himself, and before he had built the other he let it at 5*l.* 5*s.* a year, and the tenant, immediately after it was completed, entered upon it, and it was constantly let to the time of the appeal. During this time *J.* the younger, being an infant, and not having gained a settlement in his own right, lived with his father as part of his family for several years, and never gained a settlement in his own right.—LORD ELLENBOROUGH C. J. I think, upon looking at the language of the statute, that we are bound, in considering the value of a tenement, to regard that as its value which it bore at the time when the party took it, and not the increased value which it has acquired by the improvements made upon it during his occupation. If we find that this tenement was of no greater value than 2*l.* 2*s.* a year at the time when the pauper took and entered upon it, that must be deemed its value at the time *he came to settle in it*. It cannot be that its value is to be perpetually fluctuating afterwards, the time pointed to being that when he comes to settle in it, at which time, if it be not of the annual value of 10*l.*, he does not acquire a settlement by it. I forbear entering more into detail in this case, because I fear that many of the doubts that have arisen upon subjects like the present are owing to extraneous *dicta* that have from time to time fallen from the Bench. The principle, however, seems to be this, that where a party comes into a parish with a sufficient credit to acquire the taking of a tenement of 10*l.* a year, this shall entitle him to reside irremoveably.—BAYLEY J. The value of the tenement must be taken as of the time when the person comes to settle in it. The case of *The King* v. *Bilsdale Kirkham* (*a*) is a strong authority to this point. That case was shortly this: The pauper rented a tenement at 4*l.* a year, which, during his occupation, became of the value of 15*l.* a year; and it was held, that evidence to prove it of the increased value ought to have been received, because he being tenant from year to year, the lease began afresh every year, and was, in point of law, a new demise. This was the express ground of distinction taken by Lord *Mansfield* in that case.—ABBOTT J. This case is neither within the words nor the meaning of the act of parliament.—PER CURIAM; Order of Sessions confirmed.

(*a*) *Ante*, pl. 202.

212. *Rex* v. *Castle Morton*, *E. T.* 1 *G.* 4. 3 *B.* & *A.* 588.—*S. B.*, widow, and her two children, were removed, by order of two justices, from *T.* to *C. M.* On appeal, the Sessions confirmed the order, subject, &c. *J. B.*, the husband of the pauper, being settled by hiring and service in *C. M.*, afterwards took a tenement in the parish of *L.*, in the county of *W.*, of one Miss *P.*; the terms of the taking were contained in a written agreement, unstamped, which was lost. *J. B.*, after residing on the tenement about half a year, gave Miss *P.* 3*l.* to be off the bargain, and entered into a fresh agreement with Mr. *Pencent*, the landlord of Miss *P.*, who accepted him as tenant in her stead. The appellants, to prove the value to have been 10*l.* or upwards, offered parole evidence of the contents of the unstamped agreement, which had been lost, in order to prove the amount of rent agreed for between *Bedward* and Miss *P.*, which parole evidence the Court refused to admit.—ABBOTT C. J. The promissory note was there (*a*) admitted in evidence, on the ground that the defendant, who had been in that case guilty of a crime, should not be allowed to relieve himself from the consequences of it by such an objection. And so in the case of forgery, a prisoner cannot object that the forged instrument, when produced, cannot be given in evidence for want of a proper stamp. But this case is very different; for the parties here seek to show the value of a tenement by the proof a contract previously entered into respecting it. The contract was not, therefore, in this case, collateral, but of the very essence of the case. Nor can it be introduced as a declaration; for it is a declaration made under such circumstances as prevent its being admitted in evidence.—Order of Sessions affirmed.

An agreement in writing, unstamped, for the letting a tenement at a certain rent, having been lost: Held, that parole evidence of its contents was not admissable, for the sake of proving thereby the value of the tenement.

(*a*) Dover *v.* Maestaer, 5 Esp. Rep. 92.

213. *Rex* v. *St. Dunstan*, *M. T.* 6 *G.* 4. 4 *B.* & *C.* 686.—By an order of removal, dated the 22d of *March* 1824, *M. Wilson*, widow, and her six children, were removed from *St. M. N.* to *St. D.*, in the county of *Kent*. Upon an appeal the order was abandoned as to the two elder children, but was confirmed as to the other paupers, subject, &c. On the part of the respondent parish, it was proved that the pauper's husband had, on the 23d *April* 1823, gone to live in a house in the parish of *St. D.*, at the yearly rent of 10*l.*; that he had not occupied it for a year, but that he had been rated for the house in that parish, and had paid the assessment for one quarter; that one *B.* had occupied the house before the pauper's husband; that at the time of hearing of the appeal one *H.* held it, each of them paying the annual rent of 10*l.*; and that it had for six years preceding the pauper's tenancy been let, together with the articles of furniture hereafter mentioned, at 10*l.* *per annum*. On the part of the appellant parish it was proved, that all the houses in the parish of *St. D.* were rated at half their actual value; and that in the assessment on the pauper's husband, the said house was valued at 3*l.* 10*s.*; that at the time of his occupation the house was in a very bad state of repair, and that it would have required an expenditure of 40*l.* to put it into tenantable condition; that since his death, and previously to *H.*'s tenancy, 12*l.* had been expended on it; and that there were a stove and cupboard in a room below stairs, a grate and cupboard in the chamber, and a grate in the kitchen; that the stove and grates had not originally belonged to the house, but had been put in by a tenant, and the landlord had taken them in part

A landlord demised a house and fixtures to a tenant, at an annual rent of 10*l.*, and the tenant paid rates in respect of the same, but the house was not rated at 10*l.* *per annum*: Held, that the fixtures being parcel of the tenement demised, and the whole together being of the annual value of 10*l.* the tenant gained a settlement by this payment of rates.

payment of rent about six years before; that these were fixed with brick-work in the chimney-places, but that they might be removed without doing any injury to the chimney-pieces; that the cupboards stood on the ground, and were supported by hold-fasts; and that these might also be removed without doing any other injury to the walls than leaving a few marks of nails; that the use of these several articles was worth about 6*d.* *per* week; and that the tenement, including the use of them, was worth 7*l.* 10*s.*, and without them about 6*l.* *per annum.* — The Court of Quarter Sessions confirmed the order: but stated their opinion to be, that if any deduction, however small in amount, was to be made in respect of the above mentioned articles, the tenement would not be of the annual value of 10*l.* — ABBOTT C. J. It is found as a fact in this case, that the articles were the property of the landlord, and were fixed to the freehold, and that they were taken by the pauper as the property of the landlord: I am, therefore, of opinion that they constituted parcel of the tenement demised. But it has been contended, that in order to gain a settlement by payment of rates, the party must not only pay rates in respect of a tenement of the yearly value of 10*l.*, but that the tenement must be actually rated at that sum in the assessment. The statute, however, says, that it is sufficient if the rate be paid in respect of a tenement of the yearly value of 10*l.* Now the case states, that the pauper's husband was charged with, and paid rates in, respect of a tenement of that value, that according to the words of the statute was sufficient to confer a settlement in the parish of *St. D.* — BAYLEY J. It has been argued that no settlement could be gained unless the pauper were rated for a house estimated in the assessment as of the annual value of 10*l.* Whether that would be a proper line to adopt it is not necessary for us to say, because the legislature has said that it is sufficient if the party pays rates in respect of a tenement of the yearly value of 10*l.* Although these fixtures, if they had belonged to the tenant, might have been removed by him during the term; yet, as they actually belonged to the landlord, they were parcel of the freehold, and would have gone to his heir and not to his executor. The tenement, therefore, was of the annual value of 10*l.* — LITTLEDALE J. concurred. — Order of Sessions confirmed.

V. *Of* THE TIME *for which the Tenement may be taken.* (*a*)

The taking of the tenement need not be *for a whole year.*

214. *Gratwich* v. *Shenston*, *E. T.* 32 *G.* 2. *Burr. S. C.* 474. — *T. L.*, having gained a settlement at *S.*, took a house in the parish of *G.*, at 30*s.* a year, in which he resided: he afterwards took two acres of land in the parish of *K. B.*, for the growing of potatoes, and half an acre of land at 40*s.* from *Candlemas* to *Michaelmas*, for 9*l.*; and paid his rent for all the premises, which were of the value aforesaid. The pauper lodged above 40 days in the parish of *K. B.*, where the lands lay, for the convenience of digging up and disposing of the potatoes. — LORD MANSFIELD: The 13 & 14 *Car.* 2. *c.* 12. and 8 & 9 *W.* 3. *c.* 11. ought to be considered together, being *in pari materiâ*; and there is no determination that it is necessary there should be a taking *for a year.* — DENNISON J. The reason why there has been no determined case upon the

(*a*) See stats. 59 G. 3. c. 50; 6 G. 4. c. 5.

duration of the tenure is, because the act does not mention any such thing as *taking for a year*, or for any particular time. The act goes upon the credit of the person, and his ability to rent 10*l.* *per annum*. Such a man was not considered by the legislature as a vagrant, or as likely to become chargeable to the parish: and the nature of this land makes the present case stronger. I think there is no necessity to require a taking for a whole year.—FOSTER J. It is agreed by the counsel for the orders, that residence upon the tenement of the greater value is not necessary; then, taking that for granted, I have no doubt that this is a *bonâ fide* renting a tenement of 10*l.* *per annum* value.—WILMOT J. I have no doubt that the taking here stated is sufficient to answer the meaning and intention of the legislature in 13 & 14 *Car.* 2. *c.* 12.; for it turns upon the credit and ability of the person who is capable of hiring, and is judged proper to be trusted with a taking of the yearly value of 10*l.* But neither the act of parliament nor any determination upon it have said, that it must be a taking for a whole year; and if it were to be esteemed necessary to take such a tenement for a whole year, it might be attended with great inconveniences, insomuch as a man might be removed from a house even of 100*l.* *per annum* value, which he should take only for half a year. I hold it to be clear, upon this act of parliament, that it needs not to be a taking for a whole year.

215. *Staunton-under-Bardon* v. *Ulescroft*, *H. T.* 6 *G.* 3. *Burr. S. C.* 558.—*T. O. took of J. P.* a farm in *U.*, consisting of a dwelling-house and several closes and lands, then at the yearly rent of 45*l.* He entered upon the same on the 25th of *March* 1763, and occupied the premises until about the middle of *May* following; during which time he stocked the same with cattle, and then gave up the possession thereof, by consent of parties, to the said *J. P.* Upon such giving up the possession of the said farm *P.* took the possession thereof, stocked it with his cattle, and occupied the same till the 29th of *May*; when he let part of such farm to the pauper *H.* until the *Lady-day* following, under payment of the rent or sum of 27*l.* 6*s.*, *H.* to pay half the poor's levies, do half the repairs, have the manure then in the yard, and leave the same quantity at his quitting. *H.* entered upon the part of the farm he took about the 1st or 2d day of *June* following; stocked the same; brought thither the crop he was entitled to, from the farm he before held at *S.*; ploughed part of the land, and sowed it with turnips; held the whole premises set to him as aforesaid till *Lady-day* following; paid the 27*l.* 6*s.*, upon a distress taken for it; and then quitted the same. His taking the farm at *U.* appeared to be a *bonâ fide* taking, without fraud or intention of gaining a settlement in the liberty of *U.*—The question was, Whether *H.* living on a tenement of more than the value of 10*l.* a year for above 40 days gains a settlement?—MR. DUNNING, who was to have shown cause, now allowed the orders to be indefensible; wherefore the rule was made absolute to quash both orders without defence.

And therefore if a person agree to pay 27*l.* 6*s.* for part of a farm, from the 1*st of June* to the *Lady-day* following, and enter upon it accordingly, this taking is sufficient to gain a settlement.

216. *Rex* v. *Hooe*, *M. T.* 44 *G.* 3. 4 *East*, 362.—The pauper was originally settled in the parish of *H.*; and immediately previous to the hiring in question of the premises hereinafter mentioned, occupied a house in *H.*, belonging to *Pococke* at the rent of 4*l.*, of which the parish, from the inability of the pauper, paid 40*s.*

The pauper took a tenement at 11*l.* a year, which he occupied, still receiving parish

pay for six months, after, having previously agreed to underlet to another a part for 5*l.* a year, which other *guaranteed* to the landlord the payment of the rent, without which he would not have let to the pauper; but the pauper paid the whole rent for the first year: Held, that this was a *coming to settle* upon a tenement of 10*l.* a year within the 13 & 14 Car. 2. c. 12. by occupying which for 40 days irremoveable the pauper gained a settlement; though the Sessions concluded from the whole of the case that *credit* was given by the landlord to the pauper *for 6l. a year only of the rent*, and that for the residue the credit was given to the guarantee: for if the pauper were legal tenant of the whole, it was immaterial whether *credit* were given him for the *rent*.

At *Lady-day* 1803, the pauper took of the said *Pococke* a house in *P.*, with certain rights of common annexed to it, at the rent of 11*l. per annum*; but what the extent of those rights were, the pauper, when examined, did not happen to know: *Pococke* being at that time overseer of the poor for the parish of *H.* The pauper took possession of *Pococke*'s house at *P.* a few days after *Lady-day*, and continued to occupy it till the time of the removal. The period of *Lady-day* 1801 was a time of scarcity, and the parish of *H.* continued to give relief to the pauper for six months after he went to reside at *P.* The pauper was unable to purchase cattle to turn out on the common. The cause of the pauper's taking *Pococke*'s house was, that he had an opportunity of engaging in a contract with one *Porter* in carrying chalk coastwise; by which he earned above 60*l.* for himself, a man, and a boy, employed in navigating the vessel, in the course of a year. Previous to the pauper's contracting with *Pococke*, *Porter* had agreed with the pauper to take part of the premises under him, and to pay him for it 5*l. per annum*. *Porter* was desirous of having the pauper in his employ, and was the first person who made application to *Pococke* for his house. Previous to its being let, *Pococke* said he would not let the house except *Porter* would guarantee the rent. *Porter*, therefore, consented to guarantee to *Pococke* the payment of the pauper's rent, but at the time the pauper made his contract with *Pococke*, *Porter* was not present; and *Pococke* then said expressly that he made his agreement with the pauper only, and considered none but him as his tenant. The pauper paid the whole of the rent for the first year, by instalments at different times, and part of the rent for the year following, the rest remaining unpaid. It appeared that the pauper would not have hired the premises at *P.* unless *Porter* had agreed to take part of them under him, at the rent above mentioned; and *Pococke* did not consider the pauper of sufficient credit and ability to hire the premises in question, if *Porter* had not guaranteed the payment of the rent. The Court was distinctly of opinion that none of the parties to the contract acted with any fraudulent intention whatever; but that, upon the whole of the facts, credit was given by the landlord to the pauper for 6*l.* only of the rent; and that, for the residue thereof, the credit was given solely to the said *Porter*. — LORD ELLENBOROUGH C. J. Notwithstanding the case is not so intelligibly framed as it might have been, enough appears to enable us to decide upon it. The first thing to be done is to refer to the words of the statute on which the question depends. The stat. 13 & 14 *Car.* 2. *c.* 12. gives authority to two justices, on complaint within 40 days after any person "shall *come to settle* in any tenement" under 10*l.* a year, to remove him. No doubt this was a *coming to settle* by the pauper. Then it says "upon any *tenement*;" that includes the character of tenant in which he comes to settle, which is the principal question here; and then the value, which must be 10*l.* a year to confer a settlement; and here the value of the entire premises was 11*l.* a year. Now, as to the principal question, the pauper was to all intents and purposes tenant of the legal estate for the whole; fraud being excluded by the Sessions. He was liable to all the liabilities of a tenant. It is stated that the pauper *took* the premises of *Pococke at the rent* of 11*l.*, and *Pococke* said that he demised to the *pauper only*. Then shall it be said that he had not

the whole interest in him, because a surety was required for the rent. Having such a surety, has been holden to make no difference. (*a*) But it is said that the only inducement to the landlord to let to the pauper was the circumstance of having such security, and therefore credit was not given to the pauper. But so a man's inducement to take a bill of exchange may be, that he has the security of the drawer and indorser as well as the acceptor; and yet he may still give the latter credit. Then where there is a tenement of sufficient value, and a tenant not removeable, who is liable to all the burthens of a tenant, and has all the rights of one, and against whom, as such, every proceeding in law may be had, he gains a settlement by 40 days' residence on such tenement.— GROSE J. There is no difficulty in the case when the facts are properly ascertained. The pauper removed from the parish of *H.* into the parish of *P.*; and the question is, Whether, in so doing, he can be said to have *come to settle* in a tenement of the annual value of 10*l.* in that parish? Of the value of the tenement there is no doubt; and that he took possession of it. But it is said that he had not *credit* for more than 6*l.* a year of the rent. But I am satisfied with the explanation which Lord Chief Justice *Parker* gives of the statute, in a passage quoted by Mr. Justice *Buller* in *Rex* v. *Fillongley*, from the case of *South Sydenham* v. *Lamerton* (*b*); Lord Chief Justice *Parker*, having first said that the settlement depends on the *value* of the tenement, not on the *rent*, proceeds thus: "The reason of the statute is this, that a man who "is entrusted with a tenement worth 10*l.* a year is of such *credit*, "and must have such a stock, as makes him not likely to become "chargeable to the parish." The question then is, Whether this man were *trusted with a tenement* of 10*l.* a year value? To which the facts stated in the case give a decisive answer. For it is stated that the pauper took the house, &c. of *Pococke* at the rent of 11*l. per annum*; that he took possession of it, and occupied it for above 40 days; during which time, being irremoveable, he gained a settlement. Certain facts, however, have been introduced into the case, in order to raise a question, Whether he were able to pay the rent for it? If that were material, other facts show that he could; for he actually did pay the first year's rent. But it was not necessary that he should have paid it (*c*); it was sufficient that he had credit to be trusted with a tenement of the annual value of 10*l.* Let me suppose a pauper taken out of a workhouse, who obtains credit enough, upon the collateral security of a friend, for the payment of the rent, to take a house of 10*l.* a year, which he immediately after lets out again in lodgings for the purpose of gaining a livelihood, and continues the holding for above 40 days; all fraud apart, there could be no doubt of his gaining a settlement. It was not necessary for the tenant to have paid the whole rent; for though the rent were paid by others, yet as he had credit for the whole premises, it was sufficient: and he showed that he deserved that credit in the present instance; for he actually paid the whole rent. Therefore, having taken a tenement at *P.* at a rent of 11*l. per annum*, and taken possession of it, and paid the rent, it is clear that he gained a settlement there.— LAWRENCE J. It is not attempted to be argued upon the facts of the case, such as they ought to have been returned to this Court

(*a*) *Vide* Butley v. Benhall, Burr. S.C. 107.

(*b*) *Ante*, pl. 193.

(*c*) But see 6. G. 4. c. 57.

upon the evidence laid before the Quarter Sessions, that the pauper did not gain a settlement at *P.*: but it is said, that upon the statement before us, we must suppose some fact, in order to give a settlement there, which the Sessions have not found, namely, that the pauper rented the entire premises; because they have concluded that credit was only given to him for part of the rent. And from thence it is argued, that unless credit were given to the pauper for 10*l.* a year in value of the rent, no settlment can be gained by him. But I do not know that that is a necessary conclusion. The stat. 13 & 14 *Car.* 2. *c.* 12. gives power to the justices to remove, on complaint within 40 days, any person "who "shall *come to settle* in any tenement *under* the value of 10*l.* &c. "unless certain things are done which are required by that "statute:" but they have no power given them to remove any person coming to settle in a tenement of that value, or upwards. Such a person is not submitted to their jurisdiction at all. The question, therefore, is not a question concerning the *credit* of the party, but whether, in point of fact, he came to settle, *i. e.* acquired the interest of a tenant in a tenement of that value; for if he did, the justices have no power to remove him. Now, upon the facts stated, it is apparent that the pauper had an interest to that amount in a tenement as the tenant thereof, which prevented him from being an object of removal. — LE BLANC J. It is not creditable to the records of the Court to have such a case as this returned upon them: and for the sake of saving further expence to the parties, we should have send it back to be restated more correctly. At present the whole argument has turned, not on the facts of the case, but upon the evidence and observations with which it is perplexed. And, at first view, it seemed that the latter clause, stating "credit was given by the landlord to the "pauper for 6*l.* *only* of the rent," &c. had thrown an obscurity over the whole, which called for an explanation from the Sessions: but upon further consideration, it being expressly stated, that the tenement was taken by the pauper, and a *guarantee* required of *Porter*, which imports that the pauper was the real tenant, and this again confirmed by the fact found that *Porter* had agreed to take part of the premises to the value of 5*l.* a year *under the pauper*; but that the landlord would not have let the premises at all to the pauper without the guarantee of *Porter*; (from all which facts the Sessions appear to have drawn a conclusion that credit was only given to the pauper for 6*l.* a year, out of the 11*l.*, and that credit was given to *Porter* for the remainder:) I think sufficient appears to enable us to see what facts and conclusion the Sessions meant to submit to our review. And we must, I think, take them to have found, that though the pauper had taken the *whole tenement* of *Pococke*, yet, that from the guarantee of *Porter*, who was himself to occupy part under the pauper for 5*l.* a year, the Sessions thought that this, in effect, was an agreement to relieve the pauper from the responsibility of so much of the rent, leaving him only liable for 6*l.* a year, and that that would not confer a settlement on him. But that is founded on a mistake in point of law; for it is immaterial whether credit were given to the pauper for the rent, if he were the tenant of the whole premises. — Both orders quashed.

217. *Rex* v. *Tonbridge, M. T.* 7 *G.* 4. 6 *B.* & *C.* 88. — Upon an appeal against an order of two justices, whereby *J. H.* and *M.* his wife were removed from *T.* to *L.*, the Sessions quashed the order, subject, &c. Upon the hearing of the appeal on the part of the parish of *T.*, that the pauper *J. H.* and *M.* his wife had been removed in 1812 from the parish of *F.* to the parish of *L.*, under an order of removal, against which no appeal had been prosecuted. On the part of the appellant parish it was proved, that the pauper *J. H.*, about *Michaelmas* 1816, took a cottage, situate in the parish of *T.*, of one *D.*, for a year, at the yearly rent and of the value of 8*l.* 10*s.*; at *Michaelmas* 1817 he made a fresh agreement for the cottage for one year, at the annual rent of 8*l.*, and continued to hold and occupy it from that time until *Michaelmas* 1821, paying a rent of 8*l. per annum* only for it from *Michaelmas* 1817; at *Lady-day* 1821 he took a garden, also situate in the parish of *T.*, for a year, at the yearly rent and of the value of 2*l.* 2*s.*; he agreed with one *W. M.* that they should share the expence and the profits arising from the cultivation of the garden. *W. M.* paid to *J. H.* half of the rent, but the latter paid the whole rent to the landlord, who was not (to the knowledge of *J. H.*) aware of the partnership. The garden was thus occupied for a year, until *Lady-day* 1822, and the rent paid for the whole year. At *Michaelmas* 1821, *J. H.* having quitted *D.*'s house, took a house, situate in the parish of *T.*, of one *L.*, for a year, at the yearly rent of 9*l.*, and he occupied it from that time until his removal in 1825, and paid rent for it during the whole time.—The judgment of the Court was given by BAYLEY J. This was a settlement question between the parishes of *T.* and *L.*, depending on the 59 *G.* 3. *c.* 50. The facts of the case were these: the pauper was removed to *L.* in 1812, and there was no appeal. In 1816 he took a cottage in *T.* at 8*l.* 10*s. per annum*, but in 1817 the rent was reduced to 8*l.* He continued in that cottage till *Michaelmas* 1821. At *Lady-day* preceding (in 1821) he took a garden at 2*l.* 2*s.* a year, but he agreed with one *M.* that the expence and profits should be shared between them. The garden was occupied a year, and the rent paid. At *Michaelmas* 1821, when he quitted the house of 8*l.* a year, he entered upon another at the yearly rent of 9*l.*, which he occupied till 1825. So that from *Lady-day* 1821 to *Michaelmas* he had the garden and the 8*l.* house, and from *Michaelmas* 1821 to *Lady-day* 1822 he had the garden and the 9*l.* house; and it is only from *Lady-day* 1821 to *Lady-day* 1822 that there is any pretence for saying he had 10*l.* a year. By 59 *G.* 3. *c.* 50. (which operated from 2d *July* 1819,) no settlement shall be gained by dwelling 40 days in any tenement rented, unless such tenement consist of a house or building in the parish or township, being a separate and distinct dwelling-house or building, or of land there, or of both, *bonâ fide* hired at 10*l.* a year, for a whole year, nor unless such house or building shall be held, and the land occupied, and the rent for the same actually paid for one whole year at the least by the person hiring the same. One of the requisites, therefore, in case of land under that statute was, that it shall be occupied by the person hiring it for one whole year at the least. A distinction is made in that statute between houses and buildings, on the one hand, and land on the other; and though this distinction is removed by the 6 *G.* 4. as to settle-

A pauper held a house at the annual rent of 8*l.* from *Lady-day* to *Michaelmas* 1821, and a different house from *Michaelmas* 1821, to *Lady-day* 1822, at the annual rent of 9*l.* and during the whole of that period he was tenant of a garden at an annual rent of 2*l.* 2*s.*, but he had agreed with another person that they should share the expence, and the profits arising from the cultivation of the garden, and that person paid him half of the rent, but he paid the whole to the landlord; it was held that he did not gain a settlement because he did not during the whole year as required by the 59 G. 3. c. 50. hold a house and occupy land which together were of the annual value of 10*l.*

ments subsequent to the period from which that statute operates, it must still be attended to in cases of previous settlements. By 59 *G.* 3. *c.* 50. it was required, in case of a house or building, that it should be *held* for a year by the person hiring them; in the case of land, that he should occupy. In houses and buildings, therefore, so as the tenure subsisted, it was in this respect, before the statute of 6 *G.* 4. *c.* 57., sufficient, so that underletting a part of a house or building would not have prevented a settlement, and that point was accordingly so decided in *Rex* v. *North Collingham* (*a*), which was cited in the argument. But in the case of lands, the person hiring was to *occupy* for the year. Did the pauper, then, occupy the garden for the whole year? It is stated in the case, that though the pauper took the garden, it was agreed between him and *M.* that they should share the expence and profit. It is also stated, that *M.* paid the pauper half the rent, and that the garden was thus occupied. It is not in terms stated that there was a joint occupation, but as *M.* was entitled to participate in the occupation, we think that it must be taken that he did, and if so, the pauper cannot be considered as occupying more than a moiety of the garden. Unless the garden was separately occupied by the pauper the whole year no settlement was obtained. We are, therefore, of opinion, that there was no settlement in *T.*, and that the settlement in *L.* remained; and that the order of Sessions which quashed the removal to *L.*, on the ground of a settlement in *T.*, cannot be supported.—Order of Sessions quashed.

(*a*) *Ante*, pl. 190.

218. *Rex* v. *Carshalton*, *M. T.* 7 *G.* 4. 6 *B. & C.* 93. — Upon an appeal against an order, whereby *C. L.*, widow, and her two children, were removed from *C.* to *W.*, the Sessions quashed the order, subject, &c. *T. L.*, the husband of the pauper, who was previously settled by apprenticeship in the parish of *W.*, at *Lady-day* 1824, came with his family to reside in a house in the parish of *C.*, which he had hired of his father-in-law, *D. T.*, by the year, at the rent of 14*l.* He put his own furniture into the house, and continued to reside there until *July* 1825, when he died in possession. During his lifetime no more than the sum of 1*l.* 5*s.* was paid by him on account of the rent. His widow, after his death, continued to reside in the house in question until the month of *September* following, when *D. T.*, the landlord, put a distress into the premises, under which he seized the furniture and goods which had been put in by *T. L.*, and the same were afterwards sold and purchased by the said *D. T.* for the sum of 12*l.* 15*s.*, upon which the following receipt was given: "Received from Mr. *S.*, of *T.*, "on advance of goods, the sum of 12*l.* 15*s.*, for balance of rent "due from Mr. *T. L.* to *Midsummer* 1825. *D. T.*"—ABBOTT C. J. The question in this case is, Whether the pauper had any settlement derived from her husband? I am of opinion, that whether we consider this case to be governed by the 59 *G.* 3. *c.* 50., or the 6 *G.* 4. *c.* 57., the husband himself had not gained any settlement by the renting of this tenement; for there was not any payment of rent by the person hiring the tenement as required by the statute 6 *G.* 4. *c.* 57. The husband not having acquired a settlement in his lifetime, the pauper cannot have from him a derivative settlement; the order of Sessions must, therefore, be quashed. — Order of Sessions quashed.

The statute 59 G. 3. c. 50. makes the payment of a year's rent by the person hiring a tenement, a condition precedent to the gaining of a settlement, by reason of dwelling therein for 40 days. The statute 6 G. 4. c. 57. repeals that statute, but still makes the payment of a year's rent, but not by the party having the same, a condition precedent to the gaining of a settlement, and therefore, where a person after the passing of the 59 G. 3. c. 50., hired a tenement of the annual value of 10*l.*, and held it for more than a year, but died before a whole year's rent was paid, he was held to gain no settlement, although after his death, and after the passing of the 6 G. 4. c. 57., the rent was *paid out* of money produced by the sale of his goods.

VI. *Of the Residence necessary.*

A man's wife and children cannot be removed from the parish in which he has an unexpired term of a tenement above 10*l.* a year, although he occasionally reside in another place, and is absent from it more than 40 days previous to his wife and children becoming chargeable.

219. *Rex* v. *Leeds, E. T.* 4 *G.* 3. 2 *Burr. S. C.* 524. — Two justices removed *Anne Howe* and her two children, from *B.* to *L.* The case was, *Joseph Howe*, the husband of *Anne Howe*, in *June* 1761, took a tenement of 10*l. per annum* at *B.*, and was to leave it at *Michaelmas* or *Lady-day;* but no mention was made what *Michaelmas* or *Lady-day* he was to leave it. At *Michaelmas* 1761, he and his wife went to *B.*, and resided upon the said tenement till about the *Christmas* following, from which time till the month of *May* 1762 he was sometimes at *L.*, and sometimes at *B.*, but his wife and family resided wholly at *B.*, and never were at *L.* before the removal. In *May* 1762 he took, for a year, one tenement, at the annual rent of 15*l.*, and another of 5*l.*, both at *L.*, where he followed the trade of a coachmaker, and occupied them till some time in the month of *June* 1763. From the time of his taking the tenement at *L.* to *November* 1762, he resided chiefly at *L.*, but was, in the mean time, twice with his wife at *B.*, whom he left in the tenement he took there. From *November* 1762, he resided constantly at *L.*, till about the 15th of *April* 1763. His wife and family becoming chargeable to *B.*, the parish-officers apprehended him on that account, and brought him into the county of *Leicester*, when he made them satisfaction, and promised to take his wife away from *B.*, and prevent the parish being at any further expence; but she being near her time, he and his wife stayed in the said tenement at *B.*, from the 18th day of *April* 1763 to the 15th of *May* following, whilst she lay in; when he took and left her at her brother's in *W.*, and returned to *B.*, and locked up the doors of his house there, and left the key with a neighbour, and gave him directions to get the hay for him off the tenement. In a few days, and without ever having resided either in the said tenement at *B.*, or in the parish of *B.*, after the taking his wife as aforesaid to her brother's, he went to *Hunslet*, a hamlet in the parish of *L.*, which maintains its own poor, and continued there ever since. The hay was, accordingly, got for him, and still remains upon the premises, and is his property. About a fortnight since he wrote a letter to the person with whom he had left the said key, to deliver the possession of the said tenement at *B.* to the landlord; but possession was not delivered. On the day before the appeal he received the key from the said person, and had it in his possession at the time of the appeal. His wife having afterwards returned to *B.*, and wanting relief, they removed her, by order, to *L.*, as the place of her settlement. The Sessions were of opinion that *L.* was the place of her and her children's settlement, as *J. H.* had not resided 40 days upon his tenement at *B.* since he resided upon his tenement at *L.*, which he did from *November* 1762 to the said 15th of *April* 1763, as above stated; and, therefore, they confirmed the order of the two justices.—LORD MANSFIELD and the rest of THE COURT were all of opinion, that as *J. H.* could not have been removed from his tenement at *B.*, the lease whereof was unexpired, that they could not remove his wife and children so long as it remained his. Indeed, if his lease at *B.* had been at an end, his last 40 days' residence at *L.* might have borne a different consideration: but the justices have, certainly, been premature in removing them from *B.* whilst his interest there subsisted, and

from whence he himself would at that time have been irremovable. —Order quashed.

If a person alternately reside more than 40 days in the whole in each of two parishes, the settlement shall be where he lodged the last night.

See Rex v. St. Mary Lambeth, *post*. pl. 227.

220. *Rex* v. *Lowess*, *E. T.* 16 *G.* 3. *Burr. S. C.* 825.—*E. M.* was hired for a year to one *J. W.*, of the parish of *Lanstephan*, where his master occupied his own estate. He continued with his master in *Lanstephan* till some time before *St. Peter's* tide; when his master and family removed to *Lowess*, in which parish his master rented another farm. He continued with his master in *Lowess* until the 16th of *January* following, altogether; when his master, with his family, removed to the parish of *Lanstephan*. The master, after his removal to *Lanstephan*, constantly resided there; but the pauper was sent by his master back to *Lowess*, to thrash and look after his master's cattle. The pauper stayed in *Lowess*, upon his master's business, two or three nights and days, and eat and lodged there; and then returned again to *Lanstephan* for two or three days, or a week, at a time, and eat and lodged there, and then returned again to *Lowess* in like manner as aforesaid; and so continued between the said parishes to the end of his year, which was the 17th of *May* following. He never continued 40 days together in either of the parishes after the 16th of *January*, but he lived and resided as aforesaid more than 40 days in the whole in each parish; and he resided most of the latter part of his service in *Lanstephan*, and lodged there the last night; and from thence went to *Lowess* in the morning, and took some cattle of his master's from thence to the *Hay-fair*, where he finished his service.—THE COURT held him to be last legally settled in *Lanstephan*.

A person *renting* and *occupying* 10*l.* a year in one parish cannot gain a settlement by *residing* 40 days in another parish where no part of his tenement lies, and where he occupies nothing.

S. C. Cald 478.

221. *Rex* v. *Topcroft*, *M. T.* 25 *G.* 3. EDITOR's *MSS.*—*J. W.*, the pauper, rented a farm in *K.* at 30*l. per annum*, and resided on it from *Lady-day* 1779 to *Christmas* 1781, when he went with his wife publicly to reside with his son-in-law, *E. F.*, in the parish of *T.*, taking with him all his furniture, and the stock remaining on his farm at *K.* He resided with his son-in-law in *T.* upwards of 40 days before he delivered up the possession of the farm in *K.*, but he did not hire or occupy any land or tenement whatever in *T.*—THE SESSIONS confirmed the order of removal to *T.*—BEARCROFT showed cause: He said, the principle of the poor laws was, that no persons could be removed but those who were likely to become chargeable (*a*); that renting 10*l. a year* was made the test of ability; that the pauper having done so, was not likely to become chargeable, and that he was, therefore, irremoveable from *T.*, where, by continuing 40 days, he had gained a settlement.—WILSON, *contrà*: The right to a settlement from 10*l.* a year arises not from renting it, but from coming to reside upon it. Here, on the contrary, the pauper ran away from it. Not long after the statute the question arose, where part of the tenement lay in another parish, and the Court held the settlement to be in the parish where that part lay on which the pauper resided. But still he must come to settle. *Rex* v. *Llandverras* (*b*) shows, that the residence must be in the parish where the tenement, or some part of it, lies. It is not true, as BEARCROFT has stated, that a person irremovable in one parish shall be so in every other parish.—LORD MANSFIELD. There is no colour for it. Even if residence in one parish, and occupation in another, were sufficient, here is no such occupation, for he had run away, and left his tenement.—BULLER J. It is taken for granted, in many cases, that the residence must be in a parish

(*a*) See the case of Rex v. Carshalton, Burr. S. C. 812.

(*b*) *Ante*, pl. 199.

where part of the tenement lies; and I think there is a case (*a*) where it has been decided to be necessary.—Orders quashed.

To gain a settlement by renting a tenement of 10*l.* a-year there must also be a residence, either *on the premises*, or *in the parish* where they lie. See Rex *v.* Butley, *ante*, pl. 128. Rex *v.* Sowton, *post*, pl. 675.

222. *Rex* v. *Knighton*, *T. T.* 27 *G.* 3. 2 *T. R.* 48. — The pauper *R. H.*, being settled in the parish of *St. M.*, took a windmill in that parish of the yearly value of 10*l.* 10*s.* at *Lady-day* 1778, and occupied it for one year. On the 30th of *April* following he married *Anne* the daughter of *S. W.* of *K.*, which is a township within the parish of *St. M.*, but distinct as to the maintenance and settlements of the poor, and has distinct officers. Before the pauper's marriage his father-in-law said, he would give him house-room till he could provide himself; and on his marriage he went accordingly to reside with his father-in-law in *K.*, whose house was about a quarter of a mile distant from the said mill, and he continued so to reside till the death of his father-in-law in 1786. During the time he occupied the mill, or afterwards, he neither rented nor occupied any land or tenement in *K.* During the last half-year of the time he rented the mill, he kept a man-servant, who resided with him in his father-in-law's house as part of his (the pauper's) family. The pauper believed it was known to the township of *K.* that he rented the mill, because he served some of the inhabitants with grits, and they knew him to be a miller. — ASHHURST J. delivered the opinion of the Court. The question in this case is, Whether the pauper gained a settlement in the parish where he rented a tenement of the yearly value of 10*l.* or in the parish where he resided, occupying at the same time a tenement in another parish? And we are all of opinion, that he did not gain a settlement in *K.*: because, in order to gain a settlement by renting 10*l. per annum*, there must be a residence either on the premises, or at least in the parish where some part of the premises lies. The case of *Rex* v. *Topcroft* (*b*) is decisive of the question, and there are two or three other cases which confirm this doctrine, where it has been taken for granted that there must be a residence.

(*b*) *Ante*, pl. 221.

A residence of 33 days by a widow on a tenement of 10*l.* a year, cannot be coupled with a residence on the same tenement with her husband for 16 days preceding.

223. *Rex* v. *South-Lynn*, *T. T.* 34 *G.* 3. 5 *T. R.* 664. — *C. H.*, the father of the paupers, was legally settled in *E. B.*, prior to the 24th *October* 1792. On the 23d *October* 1792, the said *C. H.*, being then, and for some time before, in possession of a cottage and land in *W.*, in the county of *N.*, at the yearly rent of 2*l.* 12*s.* 6*d.*, hired a house in *S. L.* at the yearly rent of 9*l.* and paid 10*s.* 6*d.* in part of the rent; and on the following day he and his wife and their four children entered into possession, and resided thereon till his death on the 8th *November* 1792, still keeping possession of the cottage and land in *W.*— LORD KENYON C. J. If we were to decide on the express words of the act of parliament, we should overturn ninety-nine cases out of a hundred that have been determined on this statute. If *a mere residence* on a tenement for 40 days irremovable were sufficient to give a settlement, every lodger and every servant residing for that length of time would then acquire a settlement; but in order to gain a settlement by residing on a tenement of the yearly value of 10*l.* the party must stand in the relation of tenant to the property for 40 days. Here there was an inchoate right in the husband, and afterwards in the widow, which if completed by a full residence of 40 days, in either case, would have been sufficient: but that one necessary act, residence for 40 days by the same tenant to the

(*a*) Rex *v.* Sandwich, *ante*, pl. 167. See also the following case of Rex *v.* Knighton.

property, was wanting. The husband after residing 16 days on this estate died, and then the wife resided on it; but what privity was there between the husband and wife as to this property? It appears that she did not take out letters of administration so as to give her a settlement by residing on her own for 40 days, nor did she reside on the estate for that time as tenant on the premises; and indeed she was not solely entitled to administration. The case of *Rex* v. *Netherseal* (*a*) is different from the present, because there the estate was bequeathed to the widow, whose second husband lived 40 days upon it. But here there was no privity of contract or of interest whatever between the pauper and her late husband; and we cannot connect the residence of the husband, as tenant, with the residence of the widow as tenant, so as to complete the 40 days' residence by both. Though this case is new in specie, it is not new in principle; and upon the principles established in former cases, I am of opinion that the widow did not acquire any settlement in *S. L.* — ASHHURST J. We cannot couple the residence of the husband with that of the widow, because they were in distinct rights. — GROSE J. declared himself of the same opinion. — LAWRENCE J. This must be considered as a new taking of a tenement by the widow, or as a residence by her on her own estate, coming in under the title of her husband. Considered in the former point of view, under the stat. 13 & 14 *Car.* 2., the pauper only gained a settlement by the credit of having a tenement of the value of 10*l.* *per annum*: then there must be a residence for 40 days after the party has obtained that credit. If considered in the other point of view, it appears that the widow did not take out letters of administration to her husband; and all the cases have determined that the widow has no right without administering; but even if she had administered, there must also have been a residence for 40 days under this title.

(*a*) *Ante*, pl. 175.

A residence of 29 days, although the pauper was forcibly prevented from residing the remaining 11 days, is not a sufficient residence to gain a settlement.

224. *Rex* v. *Llanbedergoch*, *H. T.* 37 *G.* 3. 7 *T.R.* 105. — The pauper was tenant of a tenement in the parish of *Lleckylehad*, called *Peurkyw*, under *W. G.* for the year 1795. At *May* 1795 he received notice to quit *P.* at the *All Saints* following. The pauper said he had no place to go to, and if compelled to quit, he would take down a barn he had built upon the farm, and cut the gorse that grew on the hedges. *G.* then said, supposing we exchange, you shall go to *W. E.*, a tenement in the parish of *Llanbedergoch*, that *G.* then occupied under *Pritchard*, at the yearly rent of 10*l.* 10*s.*, to which the pauper agreed, and promised not to take down the barn at *Peurkyw*. It was then agreed between them that they were not to mention to any person that the pauper was to go to *W. E.*, lest the respondents should hear of it and prevent the pauper getting into possession of *W. E.* The pauper was apprehensive that they would not consent to his coming to their parish, he being a man of bad character. On the 16th of *November* 1795, the pauper and his family removed from *Peurkyw* to *W. E.* He did not remove his furniture there, lest the respondents should see him, he having been informed that if he could get into possession of a tenement of 10*l.* a year, and sleep in the house for one night, he could not be turned out of possession. *G.* would not have let the pauper into possession of *W. E.*, but for the purpose of inducing him to quit *Peurkyw*, and to prevent his taking down the barn; yet he thought him a responsible

person. The parishioners of *Pentraeth* were not privy to the transaction. The pauper resided 29 days on the premises, when *Pritchard*, aided by some of the parishioners of *Llanbedergoch*, the overseers of the poor of the parish of *Llanbedergoch* being then with them, *forcibly* removed him and his family from the tenement called *W. E.*, and thereby prevented him from residing in the tenement for the term of one year, or for 40 days' part thereof, whereby a legal settlement might have been gained; and he has ever since been forcibly kept out of the possession of the tenement. The pauper did not do any other act to gain a settlement in *Llanbedergoch*. He was afterwards taken up at *Pentraeth*, and sent under a vagrant's pass to the parish of *Llanbedergoch*. The pauper's place of legal settlement prior to his taking the tenement called *W. E.*, was in the parish of *Pentraeth*. — LORD KENYON C. J. In order to gain a settlement by living on a tenement of 10*l.* *per annum*, it is absolutely necessary that the party should reside there for 40 days. With regard to the fraud, which is suggested; where a case is pregnant with circumstances of fraud, the Court have repeatedly said they cannot infer fraud: that fraud is a fact to be expressly stated. It was so said in *Rex* v. *Preston*. (*a*) — And the Court held the settlement to be in *Pentraeth*.

A person who rents a farm in A. of 10*l.* a year, and resides in B. rent-free, by the permission of a relation, on a separate tenement, worth 35*s.* a year, gains a settlement in B.

225. *Rex* v. *Fritwell*, *E. T.* 37 *G.* 3. 7 *T. R.* 197. — *T. H.* rented two farms of *A. B.* in the parish of *S. L.*, the one of the yearly value of 35*s.* and the other of the yearly value of 10*l.* During the last four months that he occupied these farms, he, together with his family, dwelt in the adjoining parish of *F.*, in part of a house belonging to a near relation, who permitted him to live in it rent free: the house consisted of two separate tenements, one of which the pauper and his family occupied, together with a barn, stable, and yard appurtenant. He kept a team there, and drew his corn from his farm at *S. L.* to *F.* In this separate tenement he continued nearly two years from his first entering into it, but he never occupied any lands in the parish of *F.* The separate tenement, and use of the barn, stable, and yard, were of the yearly value of 35*s.*, or thereabouts. He never paid any rent to his relation in respect of them, but the relation had all the dung and manure made by the pauper's cattle, and spread it upon his own lands in an adjoining parish. — LORD KENYON C. J. It is now too late to inquire into the propriety of all the decisions that have been made on the settlement laws since the passing of the statute of the 13 & 14 *Car.* 2. For, even though it should appear on such inquiry (which I do not suggest is the case) that the words of that statute have been in some instances strained, yet, as there is a series of decided cases on the subject, we ought not now to depart from them. If, when the question first arose, it had been holden that the party must have one single tenement in the parish, of the annual value of 10*l.*, perhaps such a construction of the act would have fallen in with the general opinion of mankind. However, it was long ago decided, that it need not be one undivided tenement held under one landlord, nor all lying in one parish, for that distinct tenements held under different landlords, and lying in several parishes, may be joined together, and provided they alto-

(*a*) *Post*, pl. 428.; and see R. *v.* Tamworth, *post*, pl. 715. R. *v.* Tedford, *post*, pl. 666. and R. *v.* Fillongley, 1 T. R. 461.

gether amount to the annual value of 10*l.*, they will confer a settlement on the party. And that being once decided, I think, it puts an end to this question. Here the pauper, who rented two tenements in *S. L.*, went to the parish of *F.*, where he entered into part of a house, forming a distinct tenement by itself, and belonging to his relation, where he was permitted to live, but not, as has been argued, out of charity. This is not like one of the cases (*a*) cited, where the pauper was taken into the house of his son-in-law as a lodger; for here were two separate tenements, the whole of one of which he occupied; and I am not prepared to say, that his relation could have turned him out of possession on a day's notice. And though it is stated in the case that the pauper paid no rent in money, it appears that there was an equivalent; there was a *quid pro quo;* the pauper brought all his dung and manure from his other tenements, and this relation had the benefit of it. As, therefore, he was in the occupation of more than 10*l.* a year in the whole, and some part of it lay in the parish of *F.*, I am of opinion that this case was properly decided, as well by the justices who removed the pauper, as by those who confirmed the order on hearing the appeal.— ASHHURST J. The only question here is, What kind of occupation this was? It seems that it may be fairly collected from the facts stated, that the parties were in the situation of landlord and tenant. The former having one tenement more than he wanted for himself, let the other have it, who, instead of paying his rent in money, gave his relation the manure that he brought from a farm in an adjoining parish. — GROSE J. of the same opinion.— LAWRENCE J. It is stated in the case that no rent was paid for the tenement in *F.*, from which I understand, merely, that *no money* was paid for rent; for the manure seems to have been given as a compensation for the use of the tenement. And I should have no doubt but that a landlord might recover on a *quantum meruit* on such an occupation as the present.

(*a*) *Ante*, pl. 221.

A pauper, who after residing five days in B., is arrested and sent to prison in C., thereby loses his settlement in B., though his wife and children resided on his tenement therein, for seven weeks after the arrest.

226. *Rex* v. *St. George the Martyr*, *H. T.* 38 *G.* 3. 7 *T. R.* 466. — *J. L.* took the first floor of a house, No. 21, *Chandos Street*, in *St. M.*'s parish, of a Mr. *R.*, who then kept the house, at 15*l. per annum*, unfurnished, the rent to be paid quarterly. He went into possession on the 17th of *March*, and on the 22d of the same month he was arrested and carried to the *Marshalsea* prison, in *St. G.*'s parish, but his family continued to reside at No. 21, in *Chandos Street*, until the 6th of *May* following, being the space of seven weeks, the husband remaining from the time of his arrest and still being in the *Marshalsea* prison. After he was arrested, the landlord applied to his wife for the payment of the rent weekly, asking 5*s.* 9*d. per* week; but his wife refused to pay, alleging that the rent was to be paid quarterly. When the wife and children could stay there no longer, but went to the husband in prison, the latter agreed to give up the possession, and the landlord, by consent, took some part of his furniture for the seven weeks' rent. It was argued that *J. L.* did not gain any settlement in the parish of *St. M.*, because he only resided there *seven days*, and a residence of *forty days* is necessary.— LORD KENYON C. J. All the decisions on the subject prove that no settlement can be gained by a residence on a tenement for a shorter period than 40 days. And though in the case of *Rex* v. *Leeds* (*b*) it was only decided, that the *justices ought* not to have removed the pauper from *Blackfordby*

(*b*) *Ante*, pl. 219.

during the continuance of his lease, the Court added, that "if his "lease at *Blackfordby* had been at an end, his last 40 days' re- "sidence at *Leeds* might have borne a different consideration;" evidently intimating an opinion that 40 days' residence is necessary to give a settlement; and THE COURT held that he did not gain a settlement in *St. M.*

227. *Rex* v. *St. Mary, Lambeth, E. T.* 39 *G.* 3. 8 *T. R.* 240. — The pauper, about four years ago, took a tenement at the yearly rent and value of 12*l.* 12*s.*, in the parish of *L.*, and continued tenant thereof until the 29th of *September* 1797. He resided in that tenement with his wife and family from the time of taking it until the 24th of *June* 1797, when he took a lodging for the convenience of his business, at the rent of 8*l.* 10*s.* a year, in the parish of *St. M.*, where he occasionally slept, leaving his wife and family at the house in *L.* Both tenancies expired on the 29th of *September* 1797. The pauper slept sometimes in *L.* parish, and sometimes at his lodgings in *St. M.*, and for above 40 days in the whole upon the tenement in *St. M.*; and he slept there the last 30 nights of that tenancy. His wife and family never accompanied him, or slept at the lodging in *St. M.*, but remained at the house in *L.*, until about three weeks previous to *Michaelmas-day* 1797, when she went away, and took the furniture away with her. — THE COURT said, there could be no doubt but the pauper's settlement was in the parish of *St. M.*, where he had a tenement above the annual value of 10*l.* when joined to the other in *L.*, and in which former tenement he had resided on the whole above 40 days, and where he had slept the last night.

If a man has a tenement of above 10*l.* a year in A, and another under 10*l.* a year in B; and upon the whole he slept in B above 40 days, and particularly on the night when both the tenancies expire, his settlement is in B.

See S. P. Rex *v.* Lowes, *ante*, pl. 220.

228. *Rex* v. *St. Mary-le-bone, T. T.* 2 G. 4. 4 *B. & A.* 681.— Two justices, by their order, removed *Hoyden* from *St. M.* to *St. P.* The Sessions, on appeal, discharged the order, subject, &c. The pauper hired an unfurnished shop in the parish of *St. P.*, of the yearly value of 10*l.* and upwards, and lived therein eight months. He afterwards hired an unfurnished shop and parlour, part of a house in the parish of *St. M.*, at the rent of 26*l.* a year, which he took possession of on the 25th *May* 1819, and resided in and occupied the said last mentioned premises upwards of 40 days, but only 38 days of such residence and occupancy had elapsed on the 2d day of *July* 1819, the day on which the 59 *G.* 3. *c.* 50. received the royal assent. The Sessions were of opinion, that, by this residence, the pauper gained a settlement in *St. M.*, and discharged the order. — BAYLEY J. The question, in this case, turns entirely upon the construction of the statute 59 *G.* 3. *c.* 50., which took effect from the 2d of *July* 1819. The pauper had, on that day, resided in and occupied, for a period of 38 days, part of a dwelling-house in *M.* parish, at 26*l.* a year; so that, if the statute had not been passed, he would undoubtedly have acquired a settlement in *M.* by his subsequent residence and occupation, which, in the whole, considerably exceeded 40 days. But he had not, on the 2d of *July*, acquired such settlement. It was contended, that the statute being wholly expressed in the future tense did not apply to such a case, but must be considered as wholly and absolutely prospective, and confined to tenements hired after the day on which the statute took effect. If this be the true construction, then a residence of one day prior to the statute, connected with a continued residence *in pursuance of the* original hiring for 39 days

A pauper does does not gain a settlement by having hired a tenement of more than 10*l.* a year value, and having resided therein more than 40 days altogether, but less than 40 days before the passing of the 59 G. 3. c. 50., by which a residence for 12 months is necessary, in order to confer a settlement.

after the statute, will confer a settlement. The statute, however, had in view, as appears by the preamble, the preventing of the disputes and controversies which had arisen respecting the settlement of poor people by the renting of tenements. And we think this object will be best attained by giving to the words of the enacting part their full and absolute effect, and by considering the statute as applicable to every case within its scope, wherein a previous settlement had not been completely gained and established before the statute was passed. A contrary construction might open the door to many disputes and controversies as to the nature and effect of inchoate titles. Whereas, according to the construction which we adopt, the only inquiry hereafter will be, whether a settlement had been acquired before the 2d *July*, and the case will be considered as if the pauper had died or removed from the tenement on the 1st day of that month, and as if he had resided *on*, but not *after* that first day of *July*.—Order of Sessions quashed, and original order confirmed.

A house of the annual value of 10*l.* was hired by A at *Michaelmas* 1824, and he died three days before the year expired, but his corpse continued in the house after the expiration of the year, and after his death his widow resided there, and paid the year's rent: Held, that A's widow and children did not gain any settlement.

(*a*) 59 G. 3. c. 50.

229. *Rex* v. *Inhabitants of Crayford*, *M. T.* 7 *G.* 4. 6 *B.* & *C.* 68. — Upon appeal against an order of two justices, whereby *S. S.*, widow of *T. S.*, and their six children, were removed from *B.* to *C.*, the Sessions confirmed the order, subject, &c. In the month of *September* 1824, *T. S.*, the husband of the pauper, was settled in the parish of *C.* At *Michaelmas*, in the same year, he hired a house situate in the parish of *B.* for a year, at the rent and of the annual value of 12*l.* He took possession of the house on *Michaelmas-day* 1824, and continued to live in the same till the 26th *September* 1825, when he died. His body remained in the house till the 30th of the same month, when it was buried. The rent for the first three quarters of the year was paid by him, and for the last quarter, ending on the 29th *September* 1825, by his widow, the pauper. The pauper continued in the house till she was removed under the order, and paid the rent up to the 25th *December* 1825. The question was, Whether the pauper and her children, under the above circumstances, were entitled to settlement in the parish of *B.*? — BAYLEY J. The safest rule to adopt in these cases is to adhere to the words of the act of parliament. (*a*) Those words are: "That no person shall acquire a settlement by "reason of his dwelling for 40 days in any tenement rented by "such person, unless such tenement shall consist of a house or "building, being a separate and distinct dwelling-house or build-"ing, or of land, or of both, *bonâ fide* hired by such person at "and for the sum of 10*l.* a year, at the least, for the term of one "whole year; nor unless such house or building shall be *held*, and "such land occupied, and the rent for the same actually paid for "the term of one whole year, at the least, by the person hiring "the same." In order to gain a settlement, therefore, the house must be held for one whole year by the person hiring the same. Now here the husband was the person who hired the house, and he died three days before the year expired; and, consequently, he did not hold it for one whole year; he, therefore, gained no settlement by the renting of this tenement. Assuming that the widow might be considered to have held this house for a year, she was not the person who hired it, and therefore gained no settlement. — Order of Sessions confirmed.

It is not necessary to the gaining a settlement, by coming to settle upon a tenement, that the pauper should reside upon any part of it.

230. *Rex* v. *Kenardington*, *M. T.* 7 *G.* 4. 6 *B.* & *C.* 70. — Upon an appeal against an order for the removal of *W. K.* and *S.* his wife and their eight children, from *K.* to *U.*, the Sessions quashed the order, subject, &c. The pauper, *W. K.*, when about 16 years of age, hired himself for a year to *T. K.*, at the wages of 4*l.* 4*s.*; he served the year in the parish of *U.*, dwelling in his master's house there, and received his wages. He afterwards, and about 22 years ago, married *S.*, his wife, and having about four years after his marriage removed to *K.*, he entered into a contract with *J. S.*, a farmer there, to serve him as a labourer upon his farm, at the wages of 16*s.* a week, to have his wheat at 6*s.* a bushel, butter at 1*s.* a pound, and a small house of his master's, situate in his master's farm, rent free to live in. He entered into the service, and continued in it under these terms for three years, and between *Christmas* and *Lady-tide*, in the third year of his service with *J. S.*, the pauper, with two other persons, hired of *J. B.* seven acres and a quarter of land in the parish of *K.*, at the price and of the value of 25*l.* 7*s.* 6*d.*, being 3*l.* 10*s.* per acre, and at the same time he on his own account took an acre of land in the same parish of *J. B.*, at the price and of the value of 2*l.* 10*s.* The seven acre piece was cultivated and cropped with potatoes, and the expences and rent for the same were paid equally by the pauper and his two partners, but the one acre piece was cultivated and cropped with potatoes by and at the sole expence of, and rent for the same was paid by the pauper alone, thereby making his renting in the parish of *K.*, at one time, 10*l.* 19*s.* 2*d.*; and these two parcels of land were held together by the pauper and his partner six months. The pauper at no time resided on any part of the land taken of *J. B.*, but resided in the small house of his master's, on his master's farm, as his servant. At the end of three years he quitted *J. S.*'s employment, and at the same time left his house. — BAYLEY J. I am of opinion that the order of Sessions was right, a settlement having been gained in *K.* The argument against the settlement is that although the pauper rated a tenement of more than 10*l.* annual value, yet as he did not reside upon any part of it but with a master, no settlement was gained. In *Rex* v. *Bardwell* (*a*), expressions were certainly used by *Best* J. and me, giving a larger meaning to the words "coming to settle," in the 13 & 14 *Car.* 2. *c.* 12., than we ought to have done, and *Rex* v. *Shipdem* (*b*), was decided on the same ground. In *Rex* v. *Benneworth* (*c*), the Court took time to consider the question, because they were pressed with the former decisions, and reconsidered them. The point is not mentioned in the judgment pronounced in *Rex* v. *Benneworth*, but judgment could not have been given if the Court had been of opinion that *Rex* v. *Bardwell* and *Rex* v. *Shipdem* were well decided. In *Rex* v. *Sutton St. Edmund's* (*d*), it appeared that the pauper entered into a service where he was to have 18*l.* a year wages, and the keep of two cows. He lived in a cottage on his master's farm, but it was found that the occupation of the cottage was incidental to the service. The Court held that he did not gain a settlement, because there was no bargain that the cows should be pasture fed. If the Court had then thought residence upon the tenement necessary, the case would not have admitted of an argument, and the other point would not have been made the ground of the decision. *In Rex* v. *All Saints, Derby* (*e*), there

(*a*) *Ante*, pl. 160.

(*b*) 6 B. & C. 73. n.

(*c*) *Ante*, pl. 161.

(*d*) *Ante*, pl. 158.

(*e*) *Ante*, pl. 155

could not be any residence on the tenement, and yet a settlement was gained. In *Rex* v. *Benneworth*, (a) also, there was no residence on the tenement, and the renting of the tenement was during the service. It can make no difference whether the bargain for the tenement is connected with the contract for service, or whether, as in this case, it is a separate contract made with a third person. — LITTLEDALE J. concurred. — Order of Sessions confirmed.

(a) *Ante*, pl. 161.

CHAPTER V.

SETTLEMENT BY SERVING AN OFFICE.

I. *The Statutes.*
II. *Of the Office, and the Appointment to it.*
III. *Of the Time and Place of serving it.*

I. *The Statutes.*

3 *W.* & *M. c.* 11. § 6.

II. *Of the Office, and the Appointment to it.*

231. ST. *Mary* v. *St. Laurence in Reading*, *H. T.* 9 *Ann.* 10 *Mod.* 13.—One *J. M.* was first an inhabitant of *St. M.*, and afterwards came into the parish of *St. L.* During his stay in *St. L.* he was chosen WARDEN FOR THE BOROUGH, and exercised that office, as well in that parish as in some others; after which he removed into the parish of *St. M.*, and there became chargeable. The question was, Whether his residing in the parish of *St. L.*, and exercising the office of warden in that parish (though he did it in others too), was a settlement within the statute 3 & 4 *W.* & *M. c.* 11. § 6. or not? And after it had been argued at the bar, and the Court had taken time to consider the case, it was, in the ensuing term, adjudged by the consent of ALL THE JUDGES sufficient to gain a settlement.

Serving the office of *warden of a borough* will gain a settlement.

S. C. Foley, 121. Fortes. 310. Sett. & Rem. 3.

232. *Gatton* v. *Milwich*, *H. T.* 9 *Ann. Salk.* 536.—An order was drawn up specially for the opinion of the Court; and the question was, Whether one appointed *clerk of the parish* by the parson, and executing the office for a year, should gain a legal settlement within 3 & 4 *W.* & *M.*, *c.* 11. of which the words are, viz. *shall execute any annual office or charge?* for it was objected that this was not an annual office.—POWELL J. His being put in by the parson makes no difference, no more than where the constable is put in by the leet, and not by the parish; it is more than an annual office; for he is not moveable, and has fees: he is by common law an officer, and is in for life.

Serving the office of a *parish-clerk*, though chosen by the *parson*, and not by the *parishioners*, gains a settlement.

S. C. Sett. & Rem. 241. S.C. Foley, 123. Salk. 428. 523. See *post.*

233. *Rex* v. *Hammond*, *H. T.* 7 *G.* 1. *MSS.*—By PRATT C. J. Serving the office of collector of the land-tax is a sufficient office to gain a settlement within the statute of 3 & 4 *W.* &. *M. c.* 11. § 6.; for it is not necessary that the office should be a parish office; any office is sufficient, so that by the notoriety of it, it may he presumed that the parish had notice of the person's being come into the parish.

Serving the office of *collector of the land-tax* will gain a settlement.

234. *Bisham* v. *Cook*, *H. T.* 7 *G.* 1. *MSS.*—The Sessions, setting out the fact specially, adjudged the settlement of a poor person to be at *Bisham*, because when he lived in that parish he executed the office of collector of the duties given by the 6 & 7 *W. c.* 6. on births and burials. It was moved to quash it, because this was not a parish office; and it would be giving the com-

Serving the office of *collector of the duties on births and burials* gains a settlement; for it need not

missioners (who are to appoint the collectors) a power to bring what charge they would upon the parish: besides, it was not stated in the order, that this was an annual office, as it must be to give a settlement within the express words of the act. — BY THE COURT. The reason why the executing offices gives a settlement without notice is, because of the notoriety of the thing, of which the parliament thought it impossible but the parish should have notice: can any thing be more notorious than this? which is an office to collect a duty from house to house. We cannot suppose a fraud in the commissioners, that they would appoint a person of no substance to be collector, only to bring a charge upon the parish. It needs not be a parish office, but a public annual office in the parish: and as to its not being said that this man executed it for a year, we must take it he did, because it appears, on looking into the statute, that the power given to the commissioners is to appoint a person who shall be collector of the duties for a year, and then give in his accounts. It has been held a settlement in a case of the land-tax, and why not in this? — The order was confirmed.

be a *parish office*, but if it is a *public annual office* in *the parish*, it is sufficient. S.C. Foley, 124. Str. 411. R. *v.* Ilminster, *post*, pl. 247.

235. *Holy Trinity* v. *Garsington*, *H. T.* 2 *G.* 2. *Sett. & Rem.* 72. — A certificate-man went into *G.*, and was appointed *tithing-man* (*a*) by the steward of a leet. He served a year; but was not sworn in until half the year was expired. — THE COURT inclined to think that this was a good settlement; but being a new case, and somewhat doubtful, they ordered a second argument to this point, viz. Whether he was legally placed in the office or not, as not having been sworn in till half the year was expired? The order, however, was quashed for want of form: but the Court was of opinion, as to the merits, that the man gained a settlement in *G.*; for, upon subjects of settlement, the statutes are to be expounded favourably, and for the benefit of poor people.

Serving the office of *tithing-man* for a year, although not sworn in until half the year is expired, is serving an annual office. *Sed qu.* S. C. Foley, 123.

236. *Peak* v. *Bourn*, *M. T.* 6 *G.* 2. *Str.* 942. — The plaintiff declared in prohibition, that he was sued in the spiritual court for executing the office of *deputy parish-clerk* without the licence of the ordinary. On demurrer three points were made: FIRST, Whether a parish-clerk be a temporal or a spiritual officer? SECONDLY, Whether he can make a deputy? and THIRDLY, Whether the licence of the ordinary is requisite? — It was argued three several times upon all the points. BUT THE COURT, in giving judgment, founded themselves only upon the last, as to which they held, that a licence was not necessary, and therefore gave judgment for the plaintiff in prohibition. They said the canon did not require it, and indeed it would be transferring the right of appointment to all intents and purposes to the ordinary: the *Institutio Juris Canonici* 22. says, he may be appointed *solo presbytero absque scientiâ episcopi*. (*b*) As to the other two points, the Court strongly inclined that he was a temporal officer as to the right of his office, and that he might make a deputy.

Serving the office of *parish-clerk*, although without the *licence of the ordinary*, gains a settlement. S. C. Fitzg. 105. 272.

(*b*) 2 Roll. Ab. 286. pl. 44.

237. *St. Maurice* v. *St. Mary Kallendar* (*c*), *E. T.* 8 *G.* 2. *MSS.* — *W. W.* went in 1715 to *St. Mary K.*, with a certificate from the parish of *St. T.* About 1721 he was chosen one of the

The office of *constable of a city* will gain a

(*a*) See Buliscomb *v.* Stamford Peverell, Hilary Term, 9 G. 1. Str. 544. in which it was adjudged, that serving the office of *tithing-man* will gain a settlement.

(*c*) See Rex *v.* Amlwich, *post*, pl. 256.

constables for the city of *Winchester*, which consists of several parishes, and was legally placed in and executed that office, in and through all parts of that city, during one whole year; and some years before, and ever since, he resided and inhabited in the parish of *St. Mary K.* Afterwards he took *J. T.* apprentice by indenture, who continued with him four years and a half, and afterwards married and intruded into the parish of *St. Maurice*, from which he was removed into the parish of *St. Mary K.* The Sessions were of opinion, that *T.* did not gain a settlement by such apprenticeship with such a person. The question now was, Whether *W. W.* had discharged the certificate (*a*) by executing that office of constable, and, consequently, *T.* enabled to gain a settlement by serving an apprenticeship to him, notwithstanding the 12 *Ann. st.* 1. *c.* 18. *s.* 2. (*b*)—LORD HARDWICKE. Parishes were obliged by the 9 & 10 *W.* 3. to receive persons coming to them with certificates; and, therefore, in point of justice, they ought to have it in their power to adopt such persons into their parish, or exclude them, at their election; but if serving the office of constable, who is an officer eligible in the leet, which may not be coextensive with the parish, may gain a settlement, then persons may gain settlements in parishes against the will of the parishioners, which the law does not intend.—LEE J. If it was otherwise, nobody could gain new settlements; for the parishes to which certificated persons come would take care to exclude them from any trust. The consent of the parish was not attended to by the legislature under the 3 & 4 *W. & M. c.* 11. Hired servants and apprentices gain settlements, and the parish cannot prevent it. The churchwarden named by the parson is an annual officer, though the parish has no share in his election; and so is the parish clerk. Every person who serves the public in such capacities, must be considered as unlikely to become chargeable; and this is the true foundation of such settlements, that the persons to be settled have contributed to the public good by executing those offices; and being chosen into them by a competent authority, they are much more likely to promote the public good of the parish they live in, than to be burthensome to it; and on this footing, the law, as it thinks them worthy of a settlement, has conferred it on them, without attending to any person's consent. In the *Easter Term* following, LORD HARDWICKE said, that upon full consideration he was satisfied, that the same construction ought to be put upon both statutes. Certificate-men are disabled by the 8 & 9 *W.* 3. *c.* 30. from gaining any settlements, and the parish which gave the certificate is by that act expressly required to take back their parishioner, whenever he becomes chargeable to the parish where he lived. Under this act, though a parish had the benefit of a certificated person's labour and strength in his youth, yet when he should have become old and helpless, they were under no obligation to relieve him, but might immediately send him back to his old settlement, and that parish was bound to receive him. This was a great hardship on parishes giving certificates; and, therefore, the 9 & 10 *W.* 3. *c.* 11. enabled certificate-men to acquire settlements by executing an annual office, &c. This act is, therefore, to be considered as an enabling law. The only question, therefore, is, about the sort of office which he must execute for this purpose. The words of the 3 & 4 *W. & M.* are, "If any person shall, on his

settlement in that parish where the office is served, although not chosen by the parishioners. S. C. Burr. S. C. 27.

(*a*) See 9 & 10 Will. 3. c. 11.

(*b*) *Post*, "Settlement by apprenticeship."

established by private donation, appointing 10*l.* a year to be paid to *the vicar* for the care of it, does not gain a settlement. S. C. Burr. 508. Burr. S. C. 244. 2 Str. 1225.

dated *November* 1733; was a schoolmaster, and taught the charity-school there until his death in 1743, but in what manner he was admitted to this school did not appear, but only in general that he officiated till his death. Lady *A. H.* had by deed conveyed to trustees 10*l.* *per annum* in trust to be paid to the vicar of *M.*, for the time being, for the charity-school: this 10*l.* *per annum* had not been appropriated to any other use than paying it to the schoolmaster. The question was, Whether *T. M.* had gained a settlement at *M.*, either as serving an office, or as having a freehold in the school of 10*l.* a year? The Sessions were of opinion, that he had gained a settlement there, as having had a freehold in the school. — SED PER CURIAM: A schoolmaster is not an office, but only an employment; and what interest *T. M.* had in the school, whether for life, or otherwise, or how he was admitted to, or came into this employment, does not appear: the vicar is the person entitled to the 10*l.* *per annum*, and not choosing to teach the school himself, he paid it to this poor man as his deputy, which could not gain a settlement for any person whatever: so the order was quashed.

Serving the office of *bailiff* or *ale-conner*, which consists in inspecting weights and measures and warning juries, &c. will gain a settlement.

240. *Rex* v. *Whitchurch*, *T. T.* 27 & 28 *G.* 2. *Burr. S. C.* 365. — The pauper *G. H.* went to live in the borough of *O.*, where he rented a tenement of 5*l.* a year; and, soon after, executed the office of *bailiff* or *ale taster* for the said borough; to which office he was nominated and sworn at the court-leet held for the said borough, and executed the same from the *Lady-day* court to the *Lady-day* court following. The office consisted in inspecting weights and measures within the borough, and in warning the jury to serve at the court-leet there. *G. H.* had weights and scales delivered to him; and he once went about to examine the measures of ale and the weights within the said borough, and warned the jury. It also appeared, that he was nominated to the steward of the said court by the bailiff who served the office the year preceding; and was then sworn by the steward into the same office, at the court-leet. The borough is not one-fifth or one-sixth part of the parish of *O.*; and the bailiffs never execute any authority over the parish at large. Great part of the parish knew nothing of such office; and new-married men and new-comers were frequently nominated for the sake of colt-ale. — THE COURT were of opinion, that the pauper had gained a settlement by serving this office; that the question had been decided by the case of *Rex* v. *Fittleworth* (*a*), and therefore the order of the two justices removing the pauper from *W.* to *O.* was affirmed.

Serving the office of *constable*, though the person is *sworn in*, will not gain a settlement, unless he is *presented* at the leet. S. C. Bl. Rep. 452.

241. *Rex* v. *Winterbourn*, *H. T.* 4 *G.* 3. *Burr. S. C.* 520. — *W. M.*, the pauper, about thirteen years before making the order, took a house in the parish of *St. P.*, for one year, at the rent of 12*l.* by the year; and dwelt in the said house for half a year, and paid the half-year's rent. At a court-leet of the manor of *W.* and *H.*, *Richard Bayly*, Esq. was presented by the leet-jury to be constable for the year ensuing, for the tithing of *H.* in the parish of *W.*, in respect of his estate in the said tithing, but was never sworn into or took upon him the said office: *R. B.*, having notice of the appointment, procured the pauper to serve the office of constable in his stead, in order to gain the pauper a settlement at *W.*: the pauper was accordingly sworn into the office before a

(*a*) *Post*, pl. 252. and see also Rex v. Bow, *post.* pl. 255.

justice of peace for the said county, and served the office for the whole year, during which time he lived in the tithing of *H.*; but never was presented thereto at any court-leet as constable in his own right: the immemorial custom is, to present all constables to serve for the said tithing, at the said manor court-leet. It was contended, that though the pauper acted as a substitute for Mr. *B.*, yet as Mr. *B.* had never been *sworn in* to the office, and the pauper had been sworn in, he had served the office in his own right, or at least for himself and upon his own account. — But PER CURIAM: The case expressly states, that he never was presented to the office at any court-leet, as constable in his own right; and that the custom requires all constables to serve for the said tithing to be so presented. Therefore the original order, removing the pauper and his family from *W.* to the parish of *St. P.*, was affirmed.

242. *Rex v. Allcannings*, *H. T.* 9 *G.* 3. *Burr. S. C.* 634. — *T. P.* was settled in the parish of *A.* until *Michaelmas* 1756, when he went to reside in the parish of *P.* In 1762, when he lived in *P.*, he was, at a court-leet held in and for the manor and parish of *P.*, sworn tithing-man for the said manor and parish of *P.*, in the manner following, to wit, "The jurors present to the office of "tithing-man, for the year ensuing, *J. A.*, who, by leave of the "Court, puts in his place *T. P.*, and is sworn." *T. P.* lived in the parish of *P.*, and served the said office of tithing-man there for the year then ensuing; but *J. A.*, whose turn it then was to furnish a tithing-man, paid all his expences attending the execution thereof. *T. P.*, at the time of entering upon his said office, was a common labourer, and a housekeeper living in the parish of *P.* — LORD MANSFIELD: The question is, Whether the pauper served this office for himself, and on his own account, or not? The question is not, how he was presented to it; but, how he served it. Mr. *A.* was the person in turn to furnish a tithing-man; and he, by leave of the Court, put this man, a day-labourer, in his place, and paid him all the expences attending the execution of the office; and *A.* received the benefit of it, by being discharged of his obligation to serve in this his turn; therefore he served for *A.* It is true that *A.* was not liable for his misconduct, for he was not *deputy to A.*; but yet it is clear that he executed the office for *A.*, and not for himself, and on his own account, according to the intent and meaning of this act of parliament. — YATES J. In the case of *Winterbourn* (*a*), the pauper was considered as a substitute. Here indeed the man was sworn in at the court-leet, which the other was not, nor even presented at it; but he appears clearly to have served the office for Mr. *A.*, and not to have executed it for himself, and on his own account. This act of parliament meant and intended such persons as were considerable enough in a parish to serve such offices for themselves and on their own accounts, which this man was not. — ASTON J. was of the same opinion, that this man appeared clearly to have served for *A.*, and not to have executed the office for himself and on his own account. Though he was indeed so far the legal officer, that he might have had a good defence upon an information in nature of a *quo warranto* brought against him for executing the office, yet it don't follow that he executed it for himself and on his own account, within the intent and meaning of

A person serving the office of *tithing man* in the place of the person presented to the office by the court-leet, although *he* is sworn into the office, by the Court, does not thereby gain a settlement; for it is necessary that the person serving an office should serve it *for himself*, and not *for another*.

(*a*) *Ante*, pl. 241.

this act of parliament. — WILLES J. concurred in opinion, for the reasons above particularly specified. — THE COURT were unanimously of opinion, that the pauper had not hereby gained a settlement in *P.*, and therefore the orders removing him from *P.* to *A.* were affirmed.

An appointment to the office of *curate* or *sequestrator* until the bishop should release the vicarage from the sequestration, is not an *annual office*, although the party served for three years.

243. *Helsington* v. *Over*, *T. T.* 13 *G.* 3. *Burr. S. C.* 746. — On the first day of *October* 1766, the vicarage of the parish of *O.* was sequestered for three years, or till the bishop should release the same: on the 12th day of *October* aforesaid the pauper, the Rev. *J. L.*, was ordained *deacon*, by the Bishop of *Chester*, in order to supply the cure of *O.* during the sequestration: from the 15th day of *October* aforesaid to the 5th day of *June* 1768, he performed divine service as curate, and resided in the parish of *A.*, by exchange with Mr. *M.*, who was the curate of *A.*, and who, during that time, performed divine service at *O.*, and paid the pauper 5*l.* a year for doing his duty at *A.*, in addition to his salary of 35*l.* a year, which was paid him by the churchwardens who were the sequestrators of *O.*, from the said 15th day of *October* 1766 to the first day of *October* 1769, when the sequestration ended: from the said 15th day of *June* 1768 to the said first day of *October* 1769, the pauper performed divine service, and did the duty as curate at *O.*, and resided there; but it did not appear that he had any licence to the curacy of *A.* — LORD MANSFIELD. There is no colour for considering this as an annual office; it is no office at all. — ASTON J. You cannot call it an annual office, when the sequestration may be determined at any time. It is not the annual office of a constable or a tithing-man; they are appointed yearly, and to serve for the year. That of parish-clerk is a freehold, and it is upon that foot that a parish-clerk gains a settlement. — WILLES and ASHHURST Js. concurred.

A *petty constable* sworn into office, and executing it by *deputy*, thereby discharges a *certificate*, and acquires a settlement.

See Lothsome *v.* Sheriffhales, 19 Viner, 379, that the deputy does not gain a settlement.

244. *Rex* v. *Hope Mansell*, *E. T.* 23 *G.* 3. *Cald.* 252. — *D. Davies*, being a certificated person, from the parish of *R.* to the parish of *B.*, where he resided many years; during that residence had a son named *John*; *John Davies* afterwards lived in the said parish of *B.*, and was chosen petty constable, and sworn to execute that office: but after being so sworn, he declared he would not serve the office himself; and did accordingly employ one *J. A.* to serve it for him, to whom he gave 10*s.* 6*d.* for his trouble. Some years afterwards *James Davies*, the pauper, (whose legal settlement was then in the parish of *B.*,) was bound apprentice by indenture to the above-named *John Davies* for the term of seven years, in the parish of *B.*, and duly served the said term. The question was, Whether *John Davies*, not having himself executed the office of *petty constable*, had therein gained a settlement in the parish of *B.*? and THE COURT, after the case had been very elaborately argued, were of opinion that *John Davies* did gain a settlement in *B.* by serving the said office by his deputy.

Serving the office of *sexton* will gain a settlement.

S. C. *post*, pl. 254.

245. *Rex* v. *Liverpool*, *H. T.* 29 *G.* 3. EDITOR'S *MSS.* — The pauper, *S. L.*, was originally settled at *Stourton*, and, about 16 years before the order of removal was made, he came to reside at *L*; and while he resided there he was elected *sexton* by the proprietors of the seats in the church or chapel of *St. J.*, at a vestry there held in the presence of the churchwardens, being recommended by the then minister to that office; and he executed the

said office for six years, lodging all the while in the parish of *L.* The question was, Whether it was not necessary that the office should be executed *in* the parish? — But it was admitted, that the office of *sexton* was such as would entitle the person executing it to a settlement.

Serving the office of *hog-ringer* to a parish, into which the party is sworn at the court-leet, will gain a settlement.

246. *Rex* v. *Whittlesea*, *T. T.* 32 *G.* 3. 4 *T. R.* 807. — The pauper, *W. S.*, for 12 years and upwards prior to and immediately before his removal to *W.*, resided in *C*; before which time he was legally settled in *W.* During his residence at *C.* he was legally chosen an hog-ringer for the parish of *C.* for one year, at a court-leet for the manor of *C*; he was presented by the jury for the said office, and was sworn therein, and paid 4*d.* for the oath; and he served such office two years on his own account. The duty of such office is to attend the open commons, to see that all hogs turned thereupon were rung, and such hogs as were not rung it was the duty of his office to take to the pound, which he frequently did; and he always received 1*d.* for impounding, and 6*d.* for ringing each hog. The appointment to such office is of great antiquity, and serviceable to the inhabitants of the parish of *C.* During the pauper's residence at *C.* he rented a house there of one *Adam*, at the yearly rent of 8*l.* 8*s.*, for which he was to pay, and did pay, all taxes and rates, &c. The case then set forth evidence respecting the pauper's paying the taxes, &c., but it did not satisfactorily appear whether or not he was rated. — LORD KENYON C. J. It is stated in the case, that this is an annual office of great antiquity, and serviceable to the parish at large; and that there is an oath of office. Therefore it seems to me, that it is a public and annual office within the meaning of the act of parliament. Every employment in a parish is not indeed equal to express notice, though it be a matter of notoriety to the parish. It was once made a question, whether shoeing the horses of the lord of the manor was not equal to notice; but it was determined not to be equivalent. If this person had been hog-ringer to certain individuals only, he would not thereby have gained a settlement; but he was not merely an officer of A, B, or C, but of all the inhabitants of the parish. It has been held, that a tithing-man (*a*), a borsholder (*b*), an ale-taster (*c*), or a hay-ward, may gain a settlement by serving either of those offices: and the latter, whose duty it is merely to take care of the fences within his district, cannot be distinguished from this case. — Order of Sessions confirmed.

Rex *v.* Ilmington, *post*, pl. 622.

(*a*) Burlescomb *v.* Stamford Peverell, Str. 544.

(*b*) *Ante*, pl. 238.

(*c*) *Ante*, pl. 240.

The Sessions finding that the pauper was legally appointed governor of the workhouse in

247. *Rex* v. *Ilminster*, *M. T.* 41 *G.* 3. 1 *East*, 83. — Two justices by an order removed *J. G.* and his wife and children, by name, from *H.* to *I.* The Sessions on appeal confirmed the order, subject to the opinion of this Court on the following amended (*d*) case: The pauper was legally appointed in the year

(*d*) In the first case sent up to this Court it was stated "that the pauper "was appointed in 1779 governor of "the workhouse in the parish of Il-"minster for the management and go-"vernment of the poor therein, under "the annual salary of 20*l.*, which office "he continued to serve for five years, "and regularly received his salary dur-"ing that period, when he was dismis-"sed. That at the time of his appoint-"ment he was put by the parish officers "into possession of certain apartments "in the workhouse, appointed for that "purpose, and which had been occu-"pied by the former governor." This case being considered by the Court as defectively stated was sent back to the Sessions to be restated; and they returned the same case again with this

Ilminster at an annual salary, and that the office of governor is a public annual office, and that the pauper served it for a year: Held, that a settlement was thereby gained in Ilminster.

1779 governor of the workhouse in the parish of *I.*, at an annual salary of 20*l.*, which office he continued to serve for five years, and regularly received his salary during that period. The said office of governor is a public annual office; and the Sessions were of opinion that he gained a settlement in *I.* — When this case was called on, THE COURT said that the facts now stated precluded any further discussion; for the Sessions had found that the pauper had served a public annual office in the parish, to which he was legally appointed. — PER CURIAM: Order of Sessions confirmed.

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addition: "That at the time of his ap- "pointment the pauper was put by the "parish officers (*in conjunction with* "*two of the principal people of the town* "*who acted as inspectors of the accounts* "*and conduct of the overseers*) into pos- "session," &c. (as before).

Upon the first occasion, in M. T. 40 G. 3.

East, in support of the order of Sessions, contended that this was such an office or charge within the meaning of the stat. 3 W. 3. c. 11. § 6., as would enable the pauper to gain a settlement by having served it for a year. The principle on which a settlement is gained by serving an annual office in the parish is the notoriety to the parish of the residence of the party, Rex *v.* Bicham, 1 Str. 411. and no employment can be more notorious in its nature than this, to which the pauper was appointed by the parish itself. The only questions then are, Whether this employment be in its nature a public office, and whether the pauper served it in his own right, or merely as a deputy for others? The origin of this appointment is derived from the stat. 9 G. 1. c. 7. § 4, whereby it is enacted, "that for the greater ease of parishes in "the relief of the poor, it shall be law- "ful for the churchwardens and over- "seers with the consent of the major "part of the parishioners or inhabitants "in vestry or other parish or public "meeting for that purpose assembled, "or so many as shall be so assembled "on usual notice given, to purchase "or hire any house or houses in the "same parish, &c. *and to contract with* "*any person for the lodging, keeping,* "*maintaining, and employing all such* "*poor*, &c. (i. e. whose names are re- "gistered in a book) *and there to keep,* "*maintain, and employ all such poor* "*persons, and take the benefit of their* "*work, labour, and service.*" Now here it is stated that the pauper was appointed to the management and government of the poor in the workhouse, which could not have been legally done by virtue of any other authority than what is conferred by this act; and therefore the Court will rather presume that he was so legally appointed, than that the parish officers took upon themselves* without any authority to delegate part of their trust to him. It is also stated that the pauper was appointed to this trust under an *annual salary*, which the parish officers could not take upon them to grant, and which could only be legally attributed to the exercise of the power conferred by the act. Then the salary being annual, the appointment must be taken to be of equal duration; and being so made, it was not in the power even of the parish at large, much less of the parish officers alone, to have dismissed the pauper before the end of the year, except perhaps for malpractice or abuse of trust. The stat. 9 G. 1. was the first general act for the erecting of workhouses; though some few were erected before by local acts of parliament.† The intention of the legislature was to create a new public officer with new powers, which in one respect exceed that of overseers of the poor; for the person contracted with for the management and government of the poor may also engage to take the benefit of their labour in the workhouse, though in this instance the contract did not extend so far. The very nature of such an appointment imports a public office, being analogous to the duties of an overseer of the poor. In the case of Rex *v.* Bicham before mentioned, the appointment of a collector of the duties on births and burials imposed by

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* On the first amended case the concurrence of two of the principal payers, who acted by delegation for the rest under the name of *inspectors*, was stated.

† The 13 & 14 Car. 2. c. 12. § 4. &c. was confined to *London* and *Westminster* and parishes within the bills of mortality. It was further enforced by stat. 23 Car. 2. c. 18.

A curate officiating in a parish for above a year, under the bishop's licence to perform the office of curate, at a certain annual stipend, is yet not such an annual officer as is entitled to a settlement by virtue of the stat. 3 W. 3. c. 11. s. 6.

248. *Rex* v. *Wantage, M. T.* 42 *G.* 3. 2 *East*, 65. — Two justices, by an order, removed *R. P.*, clerk, from the township of *W.* to *E. L.* On appeal to the Sessions, a case was reserved, stating, that in the year 1784, *R. P.*, clerk, was nominated by the then rector of the parish and parish church of *E. L.* to be curate of the same, and was licensed to perform the office (*a*) of curate in the said parish and parish church by the then bishop of the diocese, who assigned to him the yearly stipend of 45*l.* (*b*.) That the pauper entered on the said curacy in the same year, and performed the duties thereof for six years, during which time he resided in the parsonage-house within the said parish, and that he gained no subsequent settlement. The Sessions were of opinion that this was no service of an annual public office or charge under the act, and quashed the order of removal subject to the opinion of this Court on the above case. When the case was called on, LORD KENYON C. J. said, that it was impossible to argue against the conclusion which the Sessions had drawn. There was no pretence to say that this was an office within the meaning of the act of King *William* (*a*), the executing of which for a year would give a settlement. That statute was evidently intended to be confined to inferior annual officers, such as constables and the like, known to the parish; and though, in some instances, the construction had been carried further, yet he was not inclined to extend it to cases still further from the contemplation of the legislature. — PER CURIAM: Order of Sessions confirmed.

(*a*) 3 W 3. c. 11. s. 6.

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the stat. 6 & 7 W. 3. c. 6. holden under the commissioners for managing such duties, was deemed a public annual office, by serving which a settlement might be gained. But the legislature themselves have considered this trust as a public office; for in another statute passed in *pari materiâ*, though subsequent to the appointment of the pauper, the stat. 22 G. 3. c. 83. reciting the former act, and that for the want of proper regulations and due control over the persons engaged in such contracts, the act had not had the desired effect; an option is given to adopt another form of appointment, with greater control over the appointed; and the statute proceeds to call him an officer (naming him governor of the workhouse) and the appointment *an office* (§ 14 and schedule No. 7.) although with less power than under the former act; and by this latter act such governor of the workhouse "shall have the "care, management, and employment "of the poor to be sent thither, and be "allowed a salary or wages for his "trouble." This serves to explain the intention of the legislature in the former act, if there were any doubt of it upon the face of the act itself. Now it appears that the trust committed to the pauper was exactly of the same description as that conferred by the last statute, and by the same name; and such an appointment is therein expressly denominated *an office*. Then the pauper having served such an office for above a year in Ilminster gained a settlement in that parish. — *Lens* Serjeant, *Heath*, and *Lyon* were to have argued on the other side. — The Court however thought the facts were not sufficiently stated, to raise the question: mere evidence being stated, and not the facts by whom and in what manner and under what authority the appointment of the pauper was made, and Lord *Kenyon* C. J. after the case had been amended the first time, intimated a strong opinion that as the facts then appeared, no settlement could be gained; considering the appointment of the pauper merely in the nature of a servant to the parish officers, by whom he might have been dismissed at any time within the year.

(*a*) The bishop's licence, which accompanied the case, authorizes the party during pleasure "to perform the *office* "of curate in the parish, &c. in reading "the Common Prayer and performing "other ecclesiastical duties belonging "to the said *office*, according to the form "prescribed in the book of Common "Prayer," &c.

(*b*) This is by virtue of the stat. 12 Ann. stat. 2. c. 12.

The appointment of a master of a workhouse by the parish officers and vestry, pursuant to the st. 9G.1. c. 7., which enables the parish officers and parishioners, &c., to *contract* with any person for the management of the poor in the workhouse, (and who did contract with the pauper to manage the poor in the workhouse, and teach the children to spin, &c., at a yearly salary, and after some years' service, dismissed him, at a quarter's notice), is not a *public annual office or charge* within the st. 3W. & M. c. 11. s. 6., the executing of which for a year will confer a settlement.

249. *Rex* v. *Mersham*, *H. T.* 46 *G.* 3. 7 *East*, 167. — Two justices by an order removed *R. W.*, his wife and children by name, from the parish of *B.* to *M.* The Sessions, on appeal, confirmed the order, subject to the opinion of the Court on the following case: Previous to the year 1800 the pauper's settlement was at *M.* Some time in that year, being informed that a master of the workhouse in the parish of *B.* was wanted, he applied for that appointment, and was desired to send in his proposals, and a certificate of his character, to the weekly vestry of the parish. He attended at such vestry, and after some inquiries he was desired to retire, that his proposals might be considered. Shortly afterwards he was informed that his proposals were accepted, and his character approved of; and he was desired to attend a subsequent vestry to receive his appointment. He attended accordingly; but there being only a very small attendance of the inhabitants at that vestry, his appointment was postponed to a vestry to be holden on the following *Sunday*, when he attended; and there being twelve of the inhabitants present, he was informed by the parish officers that he was appointed master of the workhouse of the parish of *B.*, at a salary of 16*l. per annum*. Nothing was said, either at the time of his appointment or afterwards, as to the time for which he was to hold his situation; but the pauper conceived that he might at any time be dismissed at a quarter's notice. There was no appointment in writing, or any entry in the parish books. He continued master of the workhouse, and resided in the parish of *B.* four years, and during the fifth year was dismissed at a quarter's notice. The duties performed by the pauper were, the superintending and managing the poor in the workhouse, teaching the poor children to spin, weaving himself, and carrying on the manufactures. He carried the accounts quarterly to the overseers. The Sessions were of opinion that the pauper did not gain a settlement in the parish of *B.* in consequence of the appointment and service above mentioned. — LORD ELLENBOROUGH C. J. The principle on which this mode of gaining a settlement has been given is undoubtedly notoriety to the parish, but a settlement can only be gained in this mode upon the terms of the act of parliament; namely, by executing "a public annual office or charge" in the parish: which brings us back to the question, Whether that which the pauper was appointed to execute were a *public office or charge*? And it appears to me that he cannot be considered as a public officer. An *office* must be derived either immediately or mediately from the crown, or be constituted by statute; and this is neither one nor the other; but merely arising out of a *contract* with the parish, which the parish officers, with the consent of the parishioners, are by the statute enabled to make with any person for the maintenance and employment of the poor. And it might as well be said that a nurse employed to look after the poor, or any other employed in the like manner to do any part of the parish business, is an officer. The question might admit of a different consideration if any distinction had been established between a *public office* and a public *charge*; but I can find no such distinction, either in any adjudged case or in the sense of the statute. Then again, if this were to be considered as an office or charge, is it an *annual* office or charge? It is said that we are to draw the conclusion that it is so by analogy to constructive hirings for a year:

but there are circumstances in this case which repel that presumption, independent of the apprehension of the pauper; for the appointment was determined at a quarter's notice, without objection. Therefore, as far as we can collect the intended duration of the employment from the acts of the parties, it appears that the parish might put an end to it within the year if they thought proper. Upon the whole, therefore, it neither appears to have been an office, nor a public office, nor a public annual office within the statute; and it is immaterial which part of the definition fails in its application to this case. — LAWRENCE J. This pauper can only have gained a settlement in *B.* by doing that which the statute of King *William* points out as equivalent to notice to the parish. The statute specifies a particular act to be done, and no equivalent for that act will satisfy it; but the words of the statute must be pursued, and no notoriety of employment in the parish will confer a settlement, unless it be by executing a public annual office or charge in the parish. This is clearly no *office*, but only an *employment* arising out of a contract; between which and an office there is a great distinction; as appears from 2 *Sid.* 142. and *Rex* v. *Milbourne.* (*a*) Then it is said that this is a public *charge;* but I know not how we can distinguish that from a public *office* in this respect. It would be going a great way to say that every contract with the parishioners for any purpose concerning the parish was a *public charge;* for that would extend to contracts with carpenters and masons for keeping the church in repair, and the like, which can never be considered to be within the meaning of the act. But the word *charge*, coupled as it is in the act with *office* must be taken to mean something of the same kind, though it may not commonly be known under the name of an office. — LE BLANC J. If this were to be deemed a public annual office or charge within the act, it would extend to every case where a person had a duty to perform, which from its nature must be known to the parish in general. But there is a difference between an employment created by the parties themselves, which they may put an end to whenever they please, and that which exists or is created by law. Now this man was in the former situation. It was in the option of the overseers and parishioners to have such a person in such an employment or not; and they could put an end to the employment altogether whenever they pleased. It was created by themselves, and depended upon their contract. I cannot, therefore, call this an office or charge within the meaning of the act of parliament. — Both orders confirmed.

(*a*) *Ante*, pl. 239. where it was holden that a schoolmaster gained no settlement by executing his employment, which was no office.

250. *Rex* v. *Holy Cross Westgate, E. T.* 2 *G.* 4. 4 *B.* & *A.* 619. — Two justices by their order removed the pauper, *E. B.*, from *H. C. W.*, in *C.*, to *H. C. W.*, in *Kent.* The Sessions on appeal confirmed the order, subject, &c. The city of *Canterbury* is divided into six wards, and two of the twelve aldermen of the city are appointed for each ward, a court-leet is held annually by the two aldermen, at which a constable and borsholder for the ward are chosen. In the month of *October* 1817, and for some time previously, the pauper resided and carried on business in the parish of *St. M. N. C.*, which is in the ward of *N.*, that ward containing the parishes of *St. M. N.* and *St. A.* On the 21st *October* 1817, the annual court-leet was held for the ward of *N.*, at which

Where a pauper was legally sworn in as a borsholder at a court-leet, and after executing the office for a few days, he was afterwards irregularly, by two magistrates, discharged from executing his office, and

another person appointed; but he acquiesced in this, and did not, in fact, afterwards execute the office: Held, that this was not executing an annual office within the parish so as to confer a settlement.

the pauper was duly chosen borsholder of the ward for the year ensuing, and upon being sent for to take upon himself the office, he attended at the court, and was regularly sworn in, the staff of office was also delivered to him by the former borsholder. A day or two afterwards he happened to be at the *City Arms* public house, within his ward, when a dispute arose between some persons, which was likely to create a disturbance, and he was desired to preserve the peace; in consequence of which, he fetched his staff, and put an end to the dispute, but he did not do any other act as borsholder than that. After he had been sworn in a few days, he was desired to attend the monthly meeting of the magistrates, and he attended with his staff; he was called into the council-chamber, and informed by the then mayor, that as it was a question to what parish he belonged, he must leave his staff there for the present, and that he should know further about it in a few weeks; he left his staff accordingly, and not having heard any thing more, he did not act, nor was he called upon afterwards to act as borsholder. The steward of the leet notified the pauper to the magistrates, as the sworn borsholder for the ward of *N.*, and he appeared so in the list of the peace officers, entered in their record-book. The succeeding court-leet for the ward of *N.* was holden on the 20th *October* 1818, and the pauper resided during the whole of the year in the parish of *St. M. N.* The duties that were required to be performed by the borsholder of the ward of *N.*, during the remainder of the year, were performed by another person, who resided part of that time within the ward, and part in the borough of *S.*, adjoining to the ward, but not within the jurisdiction of the city of *C.*, but that other person was not chosen or sworn in as borsholder of the ward, nor did he attend the Sessions in that character, nor was his name enrolled in the list of peace-officers. — ABBOTT C. J. At the time of the passing 3 & 4 *W. & M. c.* 6. it was possible for any individual to gain a settlement by a residence for 40 days in the parish. The object of that act was, to add to this the necessity of delivering to the parish officers a notice in writing, which they were required to read in the church and to register, in order that there might be public notice to all the inhabitants, that they might, in case the individual was likely to become chargeable, procure his removal from the parish. But that act contemplated two cases, in which no notice in writing was to be given, viz. the serving an annual office and the payment of parish rates. Its object was obviously notoriety. Now that is only attained by the actual execution of the office, and not by the appointment to it. Although, therefore, it does appear that the pauper in this case was irregularly discharged from his office, and another person irregularly appointed to succeed him, yet as he did forbear to do the duties of it, I think he cannot within the statute be considered as having executed a public annual office in the parish, and that he did not thereby gain a settlement. The judgment of the Sessions was therefore right. — Order of Sessions confirmed.

Where eight parishes were incorporated and had a common workhouse

251. *Rex* v. *Hambledon*, *T. T.* 6 *G.* 4. 4 *B. & C.* 459. — Upon an appeal against an order of two magistrates for the removal of *Birdseye* from *Witney* to *Hambledon*, the Sessions confirmed the order, subject, &c. In the year 1786, the parishes of *Brumley*,

Chidding fold, Dunsfold, and *Hambledon*, were incorporated under the provisions of the act 22 *G.* 3. *c.* 83. The parishes of *Haselmere, Shalford, St. Martha, Hascomb* and *Elstead*, afterwards took the benefit of the same provision, and all the parishes before mentioned became incorporated and united parishes, under and for the purposes of the act. About the year 1787, a very large house of industry was erected, by contribution of all the said parishes, upon the waste of the manor, in the parish of *H.*, as the most convenient situation for the purposes of the incorporation. To this house paupers from all the united parishes were sent by these parishes respectively, as occasion required, and were maintained separately at the expence of the respective parishes to which the paupers severally belonged. For the management of this general house of industry, and the employment of all the classes of paupers therein, a governor was, from time to time, appointed under the powers of the act. In the year 1820, *B.*, who had gained a settlement at *Witney* in *Oxfordshire* before the date of the said act, was appointed governor of the house of industry by an order in the following form: "*Surrey* Sessions. We, two of his majesty's justices of the peace for the county of *S.*, acting for the hundred of *Godalming*, in the said county, do hereby appoint *B.*, of *H.*, to execute the office of governor of the poor for the parish of *H.*, within the said hundred, for one year, to be computed from the week of *Easter* now last past, to which he has been recommended at a public meeting, holden the 29th day of *March* last, pursuant to the directions of the act passed in the 22 *G.* 3., for the better relief and employment of the poor. Given under our hands and seals this 6th day of *April* 1822, *G. W. O., J. M.*" Under this appointment he served in the said office of governor for three years in succession, upon the same terms, and during that time resided in the parish of *H.* The questions for the consideration of the Court are, Whether *B.* was duly appointed to a public annual office, according to the provisions of the statute; and whether, by his service in such office in the parish of *H.*, he gained a settlement there?—BAYLEY J. The appointment for one parish was clearly insufficient; and, on the other point also, it appears to me, that no settlement was gained in *H.* It was decided in *Rex* v. *Mersham* (*a*), that the master of a workhouse is not a public officer, unless he be made so by act of parliament; and, therefore, before the 22 *G.* 3. *c.* 83. no settlement could have been gained by service under such an appointment. That statute calls it an office, but the 39th section says, that all persons in the workhouse are to be in the same situation with respect to settlements as if the act had not been passed. For both these reasons, therefore, it appears to me, that the order of Sessions must be quashed. —HOLROYD and LITTLEDALE Js. concurred.—Order of Sessions quashed.

under the 22 G. 3. c. 83., and a person was appointed by one of those parishes governor of the poor of that parish for one year, and served for three years under that appointment, residing in the workhouse: Held, that no one parish singly had power to appoint a governor of its poor, and that the pauper did not by serving under that appointment gain a settlement. *Semble*, that if he had been appointed by all the parishes, he would not have gained a settlement. § 39 of the 22 G. 3. c. 83., providing "that nothing in the act contained shall alter or affect the settlement of any person or persons whomsoever."

(*a*) *Ante*, pl. 249.

III. *Of the Time and Place of serving it.*

252. *Fittleworth* v. *Pulborough*, *M. T.* 18 *G.* 2. *MSS.*—*W. O.*, the pauper, came with a certificate from *Pulborough* in 1736, to the parish of *Fittleworth*: In *October* 1743, he was chosen at a court-leet of the Bishop of *Chichester* for the manor of *A.*, (within which manor *F.* lies,) tithing-man for the tithing of *Cold Waltham*

The office must be executed for the space of *a year*, and, therefore, if a *tithing-man* become

chargeable when he has only served *five months*, it is not such a service as will gain him a settlement.
S. C. Burr. Sett. Cases, 288.
1 Wils. 81.
Cald. 57. 107. 253. 289.
Rex v. Bow, *post*. pl. 255.

in the said county; which tithing does not extend through all the parish of *F.*, but comprehends that part of it wherein the pauper resided. He continued to execute his office till the 30th of *March* 1744; but on the 27th day of that month he became chargeable to the parish, and an order of removal was made and executed on the 30th of *March* 1744. — LEE C. J. The question is, Whether a person coming into a parish, under a certificate, who is made a tithing-man, and exercises his office in part only of the parish, and for half a year only, gains a settlement? To this three objections have been made. 1st. That the order of removal is bad, because, at the time when he was removed, he was in the execution of a public office, from whence they had no power to remove him, and it has been compared to the case of a servant, whom the justices cannot remove: but to this they have not cited any authority; and if a servant should become chargeable to a parish, I think he may be removed. This act of the 8 & 9 *W.* 3. describes the time when a certificate-man shall be removed, that is, when he becomes chargeable, without any limitation: so that the justices by this act had certainly a power to remove the pauper. The second objection is, that this office did not extend to the whole parish: but it is stated in the order, that he exercised it in the parish; which is complying with the very words of the act of parliament, which says, that he shall execute it *in* such, and not *through* such parish. As to the third objection, which is the chief, I do not know that any case has been determined as to that purpose. That of *Garsington* (*a*) was never determined, and, besides, differs essentially from the present case, as Sir *John Strange* has shown. The 3 & 4 *W. & M.* differs in words from this act, yet it would be odd to place him on a different footing from other paupers, who are to gain settlements by the exercises of annual offices, and that is for and during a year; which must be the construction of this act, otherwise the bare placing a certificate-man in office would gain him a settlement immediately. As to the case of Mr. *Lloyd* about the taking of a tenement, there are no words about his living a year, and it is the credit he gets by the taking that fixes him in the parish; but, in the present case, he gains it by the execution of the office; and though the words of the 3 & 4 *W. & M.* have no relation by words to this act, yet, I should think, it ought to have the same construction. — WRIGHT and DENNISON Js. of the same opinion.

(*a*) *Ante*, pl. 235.

Burr. S. C. 258.

Serving the office of tithing-man *for two half years*, at different times, where the custom was to serve no more than *half a year*, will not gain a settlement.

253. *Cold Ashton* v. *Woodchester*, *H. T.* 31 *G.* 2. 1 *Burr. S. C.* 444. — There is *a custom* in the hundred of *P.*, in which the parish of *C. A.* lies, for the occupiers of small tenements within the hundred to serve the office of *tithing-man* for half a year only at a time. *D. H.*, above 25 years ago, served the office of tithing-man for the parish of *C. A.* for half a year only, and about five years ago served the same office for the same parish for another half year only. It was objected, on the one side, that this office was not an annual one. On the other, it was contended, that he had executed a public office for one whole year, for that the two halves would, under the custom of the parish, amount to a whole year, especially as the office of *tithing-man* was annual in its nature. In the case of *Burlescomb* v. *Samford Peverell* (*b*), the office of tithing-man was adjudged to be an annual office within the parish, within the meaning of the 3 & 4 *W. & M. c.* 11. *s.* 6.;

(*b*) Stra. 544.

and the electing him twice into the office shows their approbation of him the stronger, as a fit and proper person to execute such an office.— LORD MANSFIELD: By this custom, as here stated, it is not an annual office.

If a churchyard lie in two parishes, *the sexton* may gain a settlement in the one in which he resides, although no part of the church lies within that parish.

254. *Rex* v. *Liverpool, H. T.* 29 *G.* 3. 3 *T. R.* 118.— *S. Littlemore* was originally settled in *Stourton*, and about 16 years ago came to reside in *Liverpool;* and while he resided there, he was elected sexton by the proprietors of the seats in the church or chapel of *St. J.*, at a vestry there held in the presence of the churchwardens, being recommended by the then minister to that office: and executed that office six years, lodging all the while in the parish of *L.* The boundary between *W.* and *L.* is in the chapel-yard of *St. J.:* the church and part of the church-yard stands in the parish of *W.*, and the other part of the church-yard is in the parish of *L.;* but not any corpse has ever been buried in that part of the church-yard which lies in the parish of *L.* whilst the pauper executed the office, though corpses have been buried there since. The inhabitants of *L.*, seat-holders, and others, constantly attend the church of *St. J.*, in proportion of fifty to one of any other parish or place.—LORD KENYON C. J. The church-yard lies in two parishes, and the sexton gained a settlement in that in which he resided.

A, who, at an adjournment of a court-leet holden 16th Nov. 1793, was appointed to an annual office "for a year, or until he should be discharged," and who executed the office until the adjournment of another court-leet holden 1st Nov. 1793, did not thereby gain a settlement.

255. *Rex* v. *Bow, H. T.* 40 *G.* 3. 8 *T. R.* 445. — The pauper was settled in *B.* by apprenticeship. At a *Michaelmas* court-leet holden by adjournment for the manor and borough of *Chumleigh* on the 16th of *November* 1792, the pauper was appointed to the office of ale-taster of the borough and duly sworn, according to the custom of the manor, *to execute the said office for one year thence next ensuing, or until he should be lawfully discharged from the same.* He accordingly entered upon and executed such office until the 1st of *November* 1793, when at a similar court holden by adjournment for the said borough a new officer was appointed in his stead, and sworn in the same manner. The tithing-man, constables, and other officers were appointed at such court in a similar manner. No business is transacted at the original courts, but all officers are appointed at some adjournment thereof. There is only one original court-leet in the year for the said manor and borough, and that at some day within the month after *Michaelmas*, according to the convenience of the steward. — LORD KENYON C. J. The case of *N.* is at least a case of doubtful authority, and perhaps it would have been better if we had never heard of what is called *an equitable* construction of the statutes relating to settlements. It would have been better in all cases to have adhered to the plain words of the statutes. But this is an attempt to carry the point farther than it was carried in *Rex* v. *Newstead* (*a*): This is not an appointment for a year from one moveable feast to another, but from one court until it should please the steward to hold another. The words of the statute on which this question arises are express; and the case of *Rex* v. *Fittleworth* (*b*), which has been cited, shows that they have been construed according to their plain and obvious meaning. — PER CURIAM: Order of Sessions confirmed.

(*a*) See this case, *post*, pl. 343.

(*b*) *Ante*, pl. 252.

An order of removal was directed to the

256. *Rex* v. *Amlwch, M. T.* 6 *G.* 4. 4 *B. & C.* 757. — Upon an appeal by the churchwardens and overseers of the poor of the parish of *L.* against an order of two justices for the removal of

churchwardens and overseers of the parish of L. In fact, L. was a vill, and there was no churchwardens in it: Held, that the word "churchwardens" might be rejected as surplusage, and that the Sessions might, under the stat. 5 G. 2. c. 119. s. 1., amend the order by inserting in it, "or vill."

A party by serving an office of clerk to a chapel situated in an *extraparochial* vill may gain a settlement in the adjoining parish if he reside there, and if part of the duties of his office of clerk be exerciseable within that part of the parish where he resides.

Owen, shoemaker, his wife and family, from the parish of *A.* to *L.*, the Sessions quashed the order, subject, &c. In *April* 1824, overseers were appointed for the parish of *L.* The order of removal was directed to the churchwardens and overseers of the parish of *L.* To this it was objected that *L.* was not a parish. The Court of Great Sessions directed the order to be amended in this respect, and the appellants denied their right to do so, which forms the first point in this case. If they had that power, the case stands as if the removal had been to the parish or vill of *L.* The market town or village of *L.* lies partly in the parish of *A.* (the church of which is five or six miles distant) partly in two other parishes, and partly in the *vill* of L. to which this removal is made. The vill of *L.* lies in the middle of the village, and consists of a small plot of land, the property of the parson, on which stand the whole of the church and churchyard. There are also within 12 or 15 houses and a few acres of land. It has of late maintained its own poor, and the inhabitants have been assessed to the land-tax, as in the hamlet of *Bryngwallen*, which is in the parish of *Ceidio*. No churchwardens were ever known to be appointed, and no evidence was given of the appointment of a constable, although it appeared that the pauper's father had been seen acting as one for several years. The church or chapel of *L.* is kept in repair of right, one side thereof by the family who own the *Llwydiarth* estate, and the other side by the family who own the *Chrodden Issa* estate. That part of the village which is in the parish of *Amlwch* is all on the *Llwydiarth* estate, as are also the hall and several farms in the vicinity. The chapelry of *L.* is attached to the rectory of *Llanbenlan* (in the presentation of the Lord Bishop of *Bangor*), the parson of which receives the rents of the glebe lands in and near the vill of *L.*, appoints the curate, and pays his salary. The emoluments of the curate arise partly from his salary, and partly from offerings and oblations, and other payments, termed surplice fees. The inhabitants of the vill have no private sitting places in the church, all those on the south side belong to the *Chrodden Issa* estate, those on the north side belong to *Llwydiarth* estate which is in the parish of *A.*, and the chief part of the congregation are dwellers on that estate. A proportion of the elements used at the administration of the sacrament at *L.* church is supplied by *A.* The clerk and sexton of *L.* appears to have been appointed by the *Llwydiarth* family (malgré the minister); his emoluments arise from sweeping the church and washing the surplices, which are not paid by the inhabitants of the vill, and also from offerings and other fees pertaining *to his office*. *John Owen* the pauper was appointed clerk and sexton of *L.*, in *March* 1795, and he has executed the office to the present time, dwelling altogether in that part of the village of *L.* which lies in the parish of *A.* The pauper's father was clearly settled in the vill of *L.* The respondents insisted that the pauper gained no settlement in *A.* by holding the office of clerk of *L.* as aforesaid, the duties of which they contended were of right only performed in the vill, and no part thereof in *A.* On the part of the appellants it was insisted that it was the duty of the minister of *L.* to perform domestic service of the liturgy at the house of those inhabitants of the village and its vicinity who dwelt in the parish of *A.*, and that it was the duty of the clerk to attend him. The respondents called as a witness the

Rev. —— *Lewis* who had been curate of *L.* for about 16 years. The appellants called the Rev. —— *Richards* who had been curate since 1798, they also called the pauper *J. O.*, who had been clerk for 30 years, and whose father had been clerk for a great many years before. It appeared from the testimony of all the witnesses that it had been the uniform practice of the minister of *L.* to attend with his clerk at the houses of the inhabitants of *A. in the village and its vicinity*, for the purpose of visiting the sick, administering private baptism, and reading a prayer prior to the removal of bodies that were about to be buried at *L.* church. No limits were assigned as to the distance from the village within which these several services had been performed by the minister and clerk of *L.* No marriages of the inhabitants have been solemnized in *L.* The witnesses differed in opinion whether these services rendered to the inhabitants of *A.* by the minister and clerk were rendered as a matter of right or of indulgence. The Sessions were of opinion that the pauper had held an annual office, a part of the duties of which were performed in the parish of *A.* where he resided, and on that ground quashed the order of removal, subject to the opinion of the court of King's Bench on the above case. — BAYLEY J. I am of opinion, that giving a fair construction to the stat. *5 G. 2. c.* 119. § 1., the Sessions had the power to make the amendments in the order of removal which they have done. That statute enacts, "That upon all appeals "made to the justices at Sessions against judgments and orders "made by any justices, such justices so assembled at Sessions shall "upon all appeals so made to them, cause any defects of *form* that "shall be found in any such original judgments or orders to be "rectified and amended." It appears that in this case the order of removal was directed to the churchwardens and overseers of the *parish* of *L.* In fact there were no churchwardens of *L.*, and it was not a parish but a vill. The persons for whom the order was intended received it, for they appealed against it by the description given to them in the order. Upon the appeal they said that *L.* was not a parish but an extraparochial vill; in other words, they pleaded a misnomer, that was a mere matter of form. The case of The *King* v. *Great Bedwin* (*a*) is very distinguishable, because in the order of removal in that case there was no complaint from the churchwardens and overseers, nor any certificate that the person had actually become chargeable. Those were material facts and essential parts of the order, for the justices had no power to remove unless there was a complaint from the overseers, and a certificated person could not be removed unless he was adjudged to be actually chargeable. The 2d point forms the important question in this case: viz. Whether the pauper exercised an annual office within the parish of *A.* within the meaning of the *3 & 4 W. 3. c.* 11. § 6.? That statute enacts, "That if any person "shall execute any public annual office *in* the parish during one "whole year, then he shall be adjudged to have a legal settle-"ment in the same, though no such notice in writing be de-"livered and published as is hereby before required." The legislature considered the serving of an office within the parish to be a matter of such notoriety that it was equivalent to the notice required in other cases. The question is, Whether the pauper gained a settlement by executing the offices of clerk and sexton in a part of the parish where he resided? In order to gain a settle-

(*a*) *Post*, pl. 934.

ment by serving an office, it is not necessary that the duties of the office should be co-extensive with the parish; it is sufficient if it be notorious to the parish that it is an office exercisable within it. In *St. Maurice* v. *St. Mary Kallendar* in *Winchester* (*a*), and *St. Mary* v. *St. Lawrence, Reading* (*b*), the duties of the tithing-man and constable were performed in several parishes besides that in which the pauper resided. In *Rex* v. *Fittleworth* (*c*), a certificate-man was elected and sworn a tithing-man for a tithing which did not extend through all the parish of *Fittleworth*, but comprehended that part of it where he resided, and it was held that it was not necessary that the office should extend throughout all the parish, the act only requiring the execution of some annual office within the perish. It is sufficient, therefore, to give a settlement in a parish, that the duties of the office served extend into that parish. The question then is, Whether the duties of any part of the office of sexton and clerk of the chapelry and vill of *L.* were of right to be performed in the parish of *L.*? *L.* is an extra-parochial place. The duties, therefore, of the office of clerk and sexton of the chapelry may or may not be limited and confined to the vill, for the chapelry and the vill are not necessarily co-extensive. The founder of a chapel may, with the consent of the rector, fix the limits of the chapelry. It was, therefore, matter of evidence whether the chapelry extended beyond the vill, and upon that point there was a contrariety of evidence; but it appears to me that the Sessions have drawn the proper conclusion from that evidence, that the duties of the office were of right performed in the parish of *A.*, and that the pauper, therefore, gained a settlement by discharging some of the duties of the office within the parish. The rector of *L.* appoints the curate and pays the salary, but the owner of the *Llywdiarth* estate appoints the clerk and repairs the chapel. Who uses the chapel? One part is appropriated to the tenants on the *Llywdiarth* estate, which is in the parish of *A.*, the other part to the tenants on the other estate. The inhabitants of the vill have no seats. Besides, it appears to have been the uniform practice of the minister of *L.* to attend occasionally with his clerk at the houses of the parishioners of *A.* That may have been a matter of indulgence or of obligation. But I think the Sessions have drawn the proper conclusion that it was a matter of obligation. Then, if that be so, was not this a description of office notorious to the parish of *A.*? The fact of the parish of *A.* having furnished part of the sacramental elements is a very strong circumstance to show that it was notorious. Part of the charges made by the churchwardens and overseers of *A.* in their accounts must have been for bread and wine furnished to *L.* chapel. That affords a strong inference that the chapel was erected for the benefit of *A.* as well as for the vill. I think that the fact of the sacramental elements having been provided by *A.* is sufficient evidence of the notoriety, that the office of clerk of *L.* chapel was exercised within *A.* That being so I think the order of Sessions must be confirmed. — HOLROYD J. I think that the order of Sessions was right. On the first point I am satisfied that the amendment made by the Sessions respected a mere matter of form. The order was directed to the churchwardens and overseers of a district called a parish. It was material in point of substance, that it should be directed to a district, the inhabitants of which were bound by law to maintain their own poor, but it was

(*a*) *Ante*, pl. 237.
(*b*) *Ante*, pl. 231.
(*c*) *Ante*, pl. 252.

wholly immaterial in point of substance, whether that district was a parish or vill, and supposing it to be not a parish but a vill, the Sessions were right in making the alteration in the direction of the order because that was a mere matter of form. The other question is, Whether this was an office exerciseable within the district where the pauper resided? I am clearly of opinion, that the pauper must be taken to have resided in that part of the parish where the duties of his office were to be executed. Considering that the parish of *A.* contributed to the sacramental elements, and that it was the uniform practice of the clergyman and clerk to visit the sick in the parish of *A.*, and beyond the limits of the chapelry, and that the pauper resided in that part of the parish wherein his duty was exercisable, I think that he gained a settlement in that parish. — LITTLEDALE J. I am of the same opinion on both points. It is perfectly clear that the pauper served the office of clerk and sexton in the chapelry of *L.*, the only question is, Whether the chapelry extends into the parish of *A.*, for it is not necessary that the duties of the office should extend over the whole parish. It appears to me from the facts in the case, that the chapelry does extend into the parish, for the *Llwydiarth* estate is in the parish, and a great proportion of the seats belong to the dwellers on that estate, and the owner of it appoints the clerk. A chapelry is not necessarily co-extensive with a vill, and there is nothing in this case to show that the chapelry and the vill are co-terminous. The inhabitants of the vill have no seats in the church, the persons who attend there come from other parishes, *A.* being one of them. The repairs are done by persons living not in the vill, but in the parish of *A.* The parish furnishes the sacramental elements. The chapelry, therefore, is a district known to the law, extending into the parish of *A.*, and the office having been served there, I think the pauper gained a settlement in *A.* It is quite clear that there was sufficient notice to that part of the parish where the pauper resided, that he served the office of clerk, and that is sufficient to confer a settlement. — Order of Sessions affirmed.

CHAPTER VI.

SETTLEMENT BY HIRING AND SERVICE.

I. *The Statute.*
II. *Of Persons who may be hired as Servants.*
III. *Of the Contract of Hiring.*
IV. *Of general Hiring.*
V. *Of particular or special Hiring.*
VI. *Of customary Hiring.*
VII. *Of retrospective Hiring.*
VIII. *Of conditional Hiring.*
IX. *Of several Hirings.*
X. *Of Service in different Places.*
XI. *Of Service with different Masters.*
XII. *Of Marriage during Service.*
XIII. *Of Absence from the Service.*
XIV. *Of Evidence of Hiring and Service.*

I. *The Statutes.*

3 *W. & M. c.* 11. *s.* 6. — 8 & 9 *W.* 3. *c.* 30. — 9 & 10 *W.* 3. *c.* 11. 12 *Ann. st.* 1. *c.* 18. *s.* 2.—33 *G.* 3. *c.* 54. *s.* 24.—35 *G.* 3. *c.* 101.

II. *Of Persons who may be hired as Servants.*

A *widower* may gain a settlement by hiring and service, although he has children living, provided such children have gained settlements in their own right.

S. C. Foley, 131. Sett. & Rem. 5.

257. *Anthony* v. *Cardigan. E. T.* 12 *W.* 3. *Fort.* 309. — A WIDOWER had a daughter who was married into another parish and there settled. Afterwards the widower hired himself into a parish. — PER CURIAM: It is a good settlement: for it is within the meaning, though it is not within the letter, of the statute 3 *W. & M. c.* 11. *s.* 6. The words are, "if any unmarried "person not having child or children," and this man is not married; neither has he any child or children to the purpose intended by the act, viz. that can be chargeable. A case similar to this was before adjudged by POWELL and EYRE Js. at *Dorchester*. It was therefore held, that this *widower* was a person who might gain a settlement by virtue of hiring and service. (*a*)

A daughter who is emancipated may be hired as a yearly servant by her father.

S. C. Foley, 142.

258. *Missenden* v. *Chesham, T. T.* 13 *Ann.* EDITOR'S *MSS.* — The pauper, *S. B.*, had gained a settlement in the parish of *C.*, and afterwards came to live with her father, who was a poor man that had no settlement, and lived in a ruinous cottage that had been built upon the waste lands in the parish of *M.*, and for which he paid no rent. To induce his daughter to live with him, he promised to give her 10*s.* a year, and also what she might be able to

(*a*) In the report of this case, Foley, 131, it is said, "this was a *quære* "to Lord Chief Justice *Parker* upon "the circuit; and he held, that the "child being provided for, and having "a settlement distinct from the father, "he was such a person within the "equity of the statute, as would, by "being hired and serving for a year, "gain a settlement; to which the other "three Judges did all agree."

gain by her extra service and labour. She served the father under these circumstances for more than a year, but on his death became chargeable to the parish, and was removed by two justices to the parish of *C.* The Sessions on appeal confirmed the order, conceiving that as the father had no settlement himself in the parish, he could not confer a settlement on his daughter; but they admitted that there was a hiring, although it appeared to be under very suspicious circumstances. — THE WHOLE COURT agreed that a settlement may be gained by serving a man who has no settlement himself, because a servant does not derive the settlement from the master, but from the service; and that the suspicion of fraud was unfounded, for that the cottager might be old and infirm, and it was natural for a parent to desire the assistance and comfort of his own daughter in such a situation: and the order removing her from *M.* was quashed.

259. *Rex* v. *Bank-Newton*, *E. T.* 31 *G.* 2. *Burr. S. C.* 455. — *G. A.* and his wife were legally settled at *B. N.* On the 16th of *February* 1738, *J. W.*, a son of *H. W.* of *M.*, by order of his father, on the said 16th of *February* 1738, agreed, on the behalf of his father, with *A.*, who was then a married man, to serve *H. W.* for a year from the 24th of the same month of *February*, (when *W's.* then servant was to go away,) at 5*l.* 5*s.* wages, in case *H. W.* should approve the terms. *A's.* wife died on the 18th of the same month of *February*, without issue. On the 24th of the same month *A.*, then having neither wife nor child, went to *H. W.*, who asked him, "upon what terms and conditions he and his son "had agreed:" *A.* told him, "That the terms agreed upon "between him and *J. W.* were, that he *A.* should serve him *H. W.* "for a year, from the 24th of *February*, for 5*l.* 5*s.* wages, in case "he *H. W.* should approve the terms." *H. W.* said, "That he "did agree to the same terms." *A.* accordingly, on the 24th of *February* 1738, then having neither wife nor child, entered into the service of *H. W.*, and served him in *M.* for one year. — LORD MANSFIELD. The hiring was on the 24th; for the father might have dissented from the conditional agreement made by his son on the 16th; and the man being unmarried on the 24th, when the father made the complete agreement with him, clearly gained a settlement in *M.* by such hiring and service. — The three other Judges were clearly of the same opinion.

If a *married man* agree, conditionally, to become the servant of another, and between that time and the performance of the condition on which his being hired depends, his wife dies without issue, he is an *unmarried person* at the time of hiring. See the case of Farringdon v. Witty, Salk. 527.

260. *Rex* v. *Hensingham*, *T. T.* 22 *G.* 3. *Cald.* 206. — *B. G.*, the pauper, on the 6th of *January* 1772, married *A. G.*, who shortly afterward went on a voyage to sea, and at *Martinmas* following she was brought to-bed of a daughter. During the lifetime of her husband and her child she hired herself as a servant to Mr. *B.*, and continued more than a year in service under this hiring, during which time her child died. At *Whitsuntide* 1774, her husband being then living, the pauper entered into a new hiring and service with Mrs. *B.*, and continued in service under this contract until *Whitsuntide* 1776. In *August* 1775 she received notice that her husband died on the 10th of *April* 1774. — THE COURT held, that she gained a settlement, under this hiring and service; for that the service entered upon in the second year, while in a capacity to acquire a settlement, though without any new contract, and referable only to the former contract entered into when she was not in a capacity to acquire a settle-

A *wife*, whose husband is abroad, may gain a settlement by *a hiring* before his death, and *a continued service* under such hiring for a year after his death, although his death was not known until after *the year* commenced. See this case *ante*, pl. 117.

ment, is sufficient, if completed, to give a settlement even though such capacity was unknown to both parties at the time the second service or new contract was entered into.

If a servant be unmarried at the time when he is hired for a year, he gains a settlement by a year's service, though *he marry before the service commences.*

261. *Rex* v. *Allendale*, *T. T.* 29 *G.* 3. 3 *T. R.* 382. — In *February* 1786, the pauper, *J. D.*, being then an *unmarried man*, not having child or children, was hired for a year to serve *T. B.*, at *A.*, from *May-day* 1786 to *May-day* 1787, as a hind. It is the custom in that country to hire married men as hinds, because their wives are bound to perform certain services for the master in time of harvest; and when the wife of a hind dies, he must hire a female servant to perform such services. It was in the contemplation of both the master and the servant, and perfectly understood by them, at the time of hiring, that the pauper would marry before he entered upon his service. After such hiring, and before the commencement of the service, he married his wife, the other pauper, *and entered upon his service a married man*, and served out the whole year a married man at *A.* — LORD KENYON C. J. The principle on which this question must be decided has been long settled. So long ago as the 1st *Anne*, in a case between the parishes of *Farringdon* and *Witty* (*a*), it was held, that the pauper, who was unmarried at the time when he entered into this contract of service, though he married during his year, should not for that reason be prevented from gaining a settlement in the parish where he performed the service. And in deciding that case the Court went on the words of the statute 3 *W.* & *M. c.* 11., which enacts, that "*if any unmarried person*, not having child or "children, shall be *lawfully hired*, such service shall be deemed a "good settlement," &c. Therefore, on the words of this statute, the pauper in the present case gained a settlement by hiring and service at *A.*; for though he married before the service commenced, yet he was unmarried when he entered into his contract: and whether he married the day before the service commenced, or six months afterwards, it makes no difference. The case of *Rex* v. *Bank-Newton* (*a*) which was alluded to in the argument, also settles the principle on which we decide this case. It has been argued now, as if the Court in that case had proceeded on the idea that the pauper was hired on the 16th of *February*; but the Court expressly took it as the foundation of their decision, that he was not hired till the 24th, when he had ceased to be a married man. The Court, therefore, in that, as well as in the former instance, seemed to think, that the time to be attended to was the time *when the contract was made*: and that has ever since been considered as the rule. — BULLER J. Neither the custom of the country, nor the agreement between the parties, went to compel this pauper to marry before he entered upon his service; he was at liberty to do so or not as he pleased. The custom of the country only amounts to this, that part of the service is to be performed by a female: it is therefore indifferent to the master, whether the servant be married or not; because, if he be single, he must hire some female to perform those services. As to the case put at the bar, of a contract at an unreasonable distance of time before the service is to commence, that would be strong evidence of fraud. So if this pauper had been under an agreement to marry, and the master had told him that he should not marry for a month, in order to evade the statute, that also

(*a*) Salk. 527. See *post*, pl. 416.

(*a*) *Ante*, pl. 259.

See *post*, the 12th sect. of this chap., for the effect of marriage during the service.

might be considered as fraudulent. But there is no pretence to say that there is any fraud in this case. (*a*)

262. *Rex* v. *Collingbourn Ducis*, *H. T.* 31 *G.* 3. 4 *T. R.* 199. — The pauper was born in *C. K.*, while his father and mother were residing there under a certificate from *F.* At the age of nineteen he was hired for a year to serve *T. Childs*, of *Buckholt Farm*, as a carter, which he served accordingly. *B. F.* is extra-parochial; is not a township or vill; and has no parish-officers. After the pauper had served the year at *B.*, he returned to *C. K.*, and then, being unmarried, under age, and not having done any act to gain a settlement in his own right, further than as aforesaid, he was hired to, and served *S. A.*, of that parish, for a year. The Court of Sessions were of opinion that the pauper was not emancipated, and that the certificate was not discharged, so as to enable him to gain a settlement in *C. K.* by hiring and service; and THE COURT of King's Bench was unanimously of the same opinion.

The *son of a certificated person* serving under a hiring for a year in an *extra-parochial place* does not gain a settlement; and, therefore, he cannot be *hired as a servant* in the certificate parish so as to gain a settlement there.

See R. *v.* Ingworth, *post.* pl. 764. See S. C. *ante*, 74.

263. *Rex* v. *New Forest*, *H. T.* 34 *G.* 3. 5 *T. R.* 478. — On old *Martinmas-day* in the year 1777, *E. Coates*, hired himself for a year to serve *G. Bowe* in the township of *New Forest*, and served a year there accordingly. On the 22d of *December* 1777, *E. C.* married his present wife. *W. C.* a legitimate son of *E. C.*, by a former wife, being within one month of the age of 16 years, and having gained no previous settlement in his own right, on the same *Martinmas-day* 1777 hired himself for a year to *R. Nelson* of the township of *Ellerton*, which he accordingly served. — LORD KENYON: The statute 3 *W.* & *M. c.* 11. § 6. enacts, "that if any "unmarried person, *not having child or children*, shall be lawfully "hired into any parish for one year, such service shall be adjudged "and deemed a good settlement therein." The construction which the Court has put upon that section of the act is, that though the person so hired have children, yet if they have gained settlements for themselves, distinct from the father's, the statute will not prevent him acquiring a settlement by serving a year under that hiring. (*b*) But in this case the son was not separated from the father, when the latter was hired; he had gained no settlement for himself; the son indeed did on the same day enter into a contract, which might or might not have been completed, and which, when completed, would confer a settlement on the son; but at the time when the father entered into the relation of servant at *New Forest* the son formed a part of his family.

A *widower*, having a son who has no settlement of his own, cannot hire himself as a servant so as to gain a settlement thereby.

(*b*) Fol. 131.

264. *Rex* v. *Norton*, *H. T.* 48 *G.* 3. 9 *East*, 206. — Removal of *S.*, the wife of *E. L.*, from *O.* to *N.* Order confirmed, subject, &c. *E. L.* being legally settled at *N.*, was duly enlisted as a private into the ma-

A deserter from his majesty's service cannot gain a settlement by a hiring and service for a year.

(*a*) In consequence of this decision, the case of Rex *v.* the Inhabitants of Stannington was given up without argument. The case was thus: In March 1787, the pauper, William Balch, being then an unmarried man, not having a child or children, was hired for a year to serve James Johnson, at Stannington, from May-day 1787 to May-day 1788; and he accordingly entered upon that service at Stannington, and served his master there one whole year. The pauper, between the time of his being hired and the commencement of the service, married Tabitha, the other pauper, and entered upon his service a married man. The Sessions being of opinion that the pauper William Balch by such hiring and service gained a settlement in Stannington, confirmed the order of removal, by which he and his wife were removed from Lowick to Stannington; and the order was affirmed.

rines, from which he deserted, and then hired himself for a year to Mr. S. of O., and served for a year under that hiring. After the determination of this service, he was taken up for desertion, tried by a court-martial, and convicted of the same. — READER, in support of the order of Sessions, contended that a deserter was not *sui juris*, and could not within the meaning of 3 *W. & M. c.* 11. § 7. be *lawfully* hired; and assimilated this to the case of an apprentice. — REYNOLDS *contrà*, endeavoured to distinguish this from the case of an apprentice; and contended that the word *lawful*, in the statute of *William*, means a contract of hiring and service lawful in the terms, and not within the exceptions of any statutes relating to servants. They also cited *Rex* v. *Westerleigh* (*a*), and *Rex* v. *Winchcomb* (*b*), in which it was held that a *militia-man* might gain a settlement by hiring and service, though he were absent part of the time on duty, the term of his absence having been stipulated for by him. — LORD ELLENBOROUGH C. J. The case of the militia-man was t he case of a lawful contract with a just exception. The public had a claim upon the militia man's service for a certain time; and subject to that claim he might lawfully contract to serve his master. If this case were perfectly *res integra*, there might have been great doubt whether the word *lawfully* in the statute of King *William* were not to be narrowed in its construction to a contract in *the terms of it lawful*; and if the contract were lawful in its form, it might have afforded an argument whether the party serving under it could be disabled from gaining a settlement under it, by reason of his having before contracted an engagement with another person inconsistent with it. But a variety of cases have occurred which have decided the question in the case of an apprentice: and this, not on the ground of its being an excepted case, or as standing upon any occult efficacy in the indenture of apprenticeship, but upon the broad principle, that one who has contracted a relation which disables him from serving any other without the consent of his first master, is not *sui juris*, and cannot lawfully bind himself to serve such second master, so as to gain a settlement by serving for a year under such second contract. In reason and principle it cannot make any difference whether he be originally bound by a contract of apprenticeship, or by any other contract equally obligatory upon him, which disables him from binding himself to serve a second master. The objection is, that he cannot give the master a control over his service for the whole period which the master stipulates for, and has a right to require by the contract. The King's officers might at any time have reclaimed him, and taken him out of the service in which he was engaged: he cannot, therefore, be said to have been *lawfully* hired into it. The remedy which the master might in that case have had against him is another question: and the very want of power to bind himself, as he assumed without authority to do, might have founded a cause of action against him by the master. But a soldier is at least as much bound to the service of the King, as an apprentice is to that of his master: and nothing is to be inferred from the measured language of the Court in the case of an apprentice, in not laying down the principle broader than the matter in judgment required; but nothing was said by the Court in any of the cases intimating an opinion that the rule there laid down was confined to the single case of an apprentice, and therefore we must look to the reason

(*a*) *Post*, pl. 312.
(*b*) *Post*, pl. 315.

and principle of those decisions when we are called upon to apply the rule to similar cases. — GROSE J. The words of the statute have been considered, and a construction put upon them in the instance of an apprentice; and I cannot distinguish this case in principle from that. — LAWRENCE J. The decisions referred to have concluded the present question, if they were not made upon any ground peculiar to the case of an apprentice: but, as I understand them, they proceeded upon the ground that an apprentice was not *sui juris*, and could not, therefore, subject himself to the control of a second master for a whole year under a contract of hiring. And that principle will equally govern the present case. — LE BLANC J. The prior cases have decided this. The principle of them is, that if the party cannot make such a contract for his service, of which the master may avail himself for the whole year according to the contract, no settlement can be gained under it.

An invalid soldier at the *depôt*, who, in pursuance of an order from government, had leave of absence, upon agreeing to relinquish his pay for the time, which leave was renewed from time to time, by furlough for different periods of three, six, and four months, which he procured by going to the *depôt* for them, was held not to gain a settlement by hiring and service for a year, not being *sui juris* lawfully to hire himself within the stat. 3 W. & M. c. 11., though before such hiring the mistress applied to the commanding officer at the *depôt*, to know if he might hire himself for a year; and was told that he might, and during the year's service he received no pay,

265. Rex v. *Inhabitants of Beaulieu, M. T. 55 G. 3. 3 M. & S. 229.* — Removal from *M.* to *B.* — Order confirmed, subject, &c. — The pauper was a soldier, and in 1806 was invalided, and sent to the depôt at *L.* The invalids, by order of government, were allowed leave of absence, upon their agreeing to relinquish their pay during such absence. In the year 1808 the pauper hired himself to Mrs. *B.*, of *L.*, for a year, and served such year in the parish of *L.* Previously to this, Mrs. *B.* applied to the commanding officer at the depôt to know if the pauper might hire himself for that period, and was told that he might. During the whole of his service for a year with Mrs. *B.* he received no pay, nor was he called upon to perform, nor did he perform any military duty, but he used to go to the depôt at *L.* from time to time to get his furlough renewed, which never took him more than half an hour. The commanding officer, on his evidence, said, that he could send for him at any time, if the exigencies of the state required it. — LORD ELLENBOROUGH C. J. To confer a right to a settlement by hiring and service for a year, as there are no words in the statute which qualify the general sense of the word hiring, I must take it to mean an absolute, unqualified, indefeasible hiring, that is, a hiring by which the party who hires himself has the power of communicating to the master an absolute right to his service for the whole time. In order, therefore, to do this, the party must be *sui juris*, and have the faculty of disposing of his own service. I think this case falls strictly within the analogy of the case of the apprentice, who, in respect of his obligation to serve one master, is disabled from entering into a contract to serve another. However, the cases of the militia-men have been pressed upon our attention; I would wish to speak of those cases, as of the decisions of persons who have gone before us so highly venerable, with all the respect that is due to them, and I would therefore avoid trenching upon them as little as possible. But when I find them speaking of leaning in favour of settlements, and when I recollect that a pauper must be provided for somewhere, either as a settled inhabitant, or as casual poor; and when I find, too, that one of those decisions goes the length of holding that eleven months may mean a year, I really am unable, with all the respect I bear to those persons who decided them, to go along with them so far. Perhaps, therefore, it may be the best thing to say of the militia-

nor was called upon, nor did perform any military duty. *Bayley* J. *diss.* and *Dampier* J. absent.

men's cases, that they are to be considered as exceptions. Here it appears, there has been a hiring for a year; but not a lawful hiring in the sense of an effectual hiring. An effectual hiring is, where the servant is enabled to give the master a *quid pro quo*. Had this person the power of doing so? He had not. There was a halt and pause to be made four times during the year until he should renew his furlough. If the question were raised upon special verdict, whether this was an effectual hiring, understanding by that that the party must have a capacity of conferring what he stipulates for, could it be argued upon a statement of these circumstances, that the pauper really passed to the master an interest in the whole of his service? This service, in reality, belonged to the crown, and he could only contract for so much of it as was remitted out of the right of the crown. It appears to me, therefore, that there has been no lawful hiring for a year, inasmuch as the servant had not the faculty of communicating the service he contracted for. It is said, here was no fraud, and that is true; but there is the vice of the argument, for this is not a question between the master who hires and the man who is hired, but whether a condition which the legislature has imposed on this branch of settlements has been complied with. The question is, Whether this be such a hiring as the legislature intended? It seems to me that it is not, and that the reasoning in the case of the apprentice applies with full force to the present case. Therefore, there not being such a hiring as the statute requires, the pauper has not gained a settlement. — LE BLANC J. The question is, Whether the pauper has gained a settlement by hiring and service? The case states him to be an invalided soldier in the British service, and under military orders at the depôt. In that situation he was, no doubt, to all intents and purposes, a soldier, and subject to a control and command inconsistent with his entering into any other absolute engagement to serve another master. While, however, he remained at the depôt, a plan was devised for giving the invalids leave of absence, they agreeing to relinquish their pay. Still the invalid was only to be absent on such leave as was granted, and that leave was to expire at a limited period; and if not renewed, he would be obliged to return to his duty, under the penalty of being treated as a deserter. In this situation of things, he enters into this contract; and the doubt is, if it be a lawful contract; not lawful, as it regards his being guilty of a crime, or as it affects his right to recover wages, but whether lawful within the meaning of the statute. The question turns simply on this, Whether that is within the meaning of the statute a lawful hiring for a year, where a person, who is under a legal disability in consequence of having entered into a different obligation, which subjects him to be called upon whenever the exigencies of the state require, contracts the relation of servant absolutely for the period of a year? In this view, the case steers clear of the cases upon conditional hirings, where the party, being perfectly *sui juris*, is capable of contracting, but reserves a power of determining the contract with notice at any given time or times. For here at no time could the party make a valid contract for a year. He could not transfer to the master the control over his services for that time. Nor do the cases of *Rex* v. *Westerleigh* (*a*), and *Rex* v. *Winchcombe* (*b*), respecting the militia-men,

(*a*) *Post*, pl. 312.
(*b*) *Post*, pl. 315.

which have been particularly pressed upon the Court, seem to me to be precisely in point. Those cases, which have decided that a *militia*-man may enter into a contract of hiring and service for a year, with a reservation of a time for performing his military duties, are not to be disturbed; but still they are not to be extended, and to be applied to soldiers in the King's service, who contract in a way incompatible with the obligations of that service. The present case seems rather to fall within that class of cases which have decided, that if a man be under an engagement which obliges him to render to another his full services, he is incapable of entering into a lawful contract of hiring and service within the statute. Such was the apprentice's case; and it makes no difference that the master to whom he was bound does not avail himself of his rights to call for the service of his apprentice. Such also was the case of *Rex* v. *Norton* (*c*); there, indeed, the pauper was a deserter; but the principle of that decision did not turn *entirely* on that circumstance. The term "lawful hiring;" was not construed according to the sense of whether the party in making the engagement, was acting morally or legally wrong; he was, indeed, in consequence of desertion, subject to military punishment; but the principle of that decision was this, that he was liable at any moment to be taken from the service of his master. His contract, therefore, was of that description, which did not give the master an absolute control over his services during the time contracted for. I would wish to lay out of the case all distinctions which do not apply to the true principle, viz. whether the party was in a condition to make the contract. Here certainly nothing was criminal; the mistress had notice, and so had the commanding officer; and it is to be collected from what is stated, that it was his opinion at least that it was not probable the man would be taken out of the service during the time; but still he remained liable to be called on, whenever the exigencies of his military duty required, and in compliance with that duty, was actually obliged, at stated intervals, while he was in the service of his mistress, to repair to the depôt, and there present himself, in order to obtain a renewal of his furlough. It might perhaps have been renewed by means of an application by letter, without personal attendance, but still the terms upon which the leave of absence was granted, were for a limited time only, and unless he had returned at the expiration of that time, he would have been liable to be apprehended as a deserter. And as to his being able to renew the furlough in so short a space of time as stated, that will not alter the question; the law must be the same, whether the mistress live a hundred miles off the depôt or in the same town. It seems to me, therefore, that this pauper did not gain any settlement at *L.* by this hiring and service, inasmuch as he was incapable of entering into a lawful contract within the statute.— BAYLEY J. I am so unfortunate as to entertain a different opinion; and to think that this hiring was sufficient to confer a settlement at *L.* I do not find it mentioned in the act of parliament that there must be an indefeasible hiring; but I think there has been a lawful hiring for a year, subject to be defeated in one event, but that event on which it might have been defeated has not occurred. Under these circumstances it seems to me, that we should be doing no violence to the act of parliament by holding that this was a

(*c*) *Ante*, pl. 264.

sufficient hiring for a year to confer a settlement. The words of the act are, "if any person shall be *lawfully hired*:" and it is agreed, that here was nothing unlawful in the hiring; that is, that the person who hired himself had a power to contract for a year, provided he was not taken out of his service by his military duties. The mistress was given to understand that he was liable to be taken away; there was therefore no improper concealment, and the contract was such as the party contracting might lawfully make, subject to the above understanding, being made at a time when he was *sui juris*. It was certainly, as I have said, liable to be defeated, but so may many other contracts, which nevertheless would be sufficient to confer a settlement. To instance in one particular; namely, the case that has already been put in argument. Suppose the master of a servant, having occasion to go abroad, was to say to his servant, whom he left at home, "I "may be absent only six months, or possibly I may be absent five "years; in the meanwhile take you care, in the bargains which "you shall make, that you keep yourselves at liberty to come "back to me on my return." Suppose under these circumstances the servant does enter into a contract with another master to serve him for a year, provided his former master should not in the mean time return, I apprehend that that would be a good and valid contract of hiring for a year, such as would confer a settlement. The case of *Rex* v. *Norton* (*a*) seems to me perfectly distinguishable; because, there the servant in the very act of making the contract was doing that which was unlawful. He was a deserter, and besides that, he never apprised his master of his situation, who was deceived by the concealment, and did not acquire that control over his services which he, the master, had a right to expect. Every moment of his continuance in the service was an illegal act. So, in the case of an apprentice, if he contracts to enter into the service of another he does so either with or without the consent of his master; if with the consent of his master, it is a service to the second master under the indenture; and he gains a settlement by such service, it being referable to the indenture. If he hires himself to a second master without the consent of his first master, it is an illegal act on his part, and he is not in the terms of the statute lawfully hired. The cases of the militia-men are certainly not such as I should choose altogether to rest my opinion upon; in the first of them the pauper was only probably liable to be taken out of the service for one month; however, he was possibly liable to have been taken out for the whole year, if the crown had thought fit to require his services. The bargain was this: I will serve for a year; but may have occasion to attend my duty as a militia-man for about a month; but if I am taken out of your service, I will pay another to serve in my place, or make allowance in my wages for the time of absence. Now, if that which to day is contended to be an objection, is valid, it would have been open in that case to have objected, that the party was not in a condition to make any contract at all to serve for any portion of time; because he was liable to be called upon in another service during the whole time; but yet that hiring was held sufficient. As to the doctrine, that settlements ought to be favoured, it is not a doctrine on which I rely; because I conceive it to be in the eye of the law a matter

(*a*) *Ante*, pl. 264.

perfectly indifferent where the party is settled. The next case of *Rex* v. *Winchcombe* (*b*) is open to the objection, that there was a service but for eleven months. However, without the aid of these cases, it seems to me that here the party was *sui juris* to enter into the contract; that this was a contract which was only defeasible, and would confer a right of action to the master, if the servant absented himself on any other grounds except that of his being called upon by the act of government. For these reasons, and as I do not find any thing in the statute but the word lawful, to limit the nature of the hiring, and, inasmuch as there has been a defeasible hiring for a year, which has not been defeated, and the party who was hired committed no fraud, but communicated the circumstances to the person who hired him, it strikes me that this was a sufficient hiring to confer a settlement. — Order confirmed.

(a) *Post*, pl. 315.

An infant pauper may gain a settlement by hiring and service with his father.

266. *Rex* v. *Chillesford*, *Rex* v. *Winslow*, *E. T.* 6 *G.* 4. 4 *B.* & *C.* 94 — In the first of these cases upon an appeal against an order of two justices for the removal of *John Bye*, *Sarah* his wife, and four children, from *B.* to *C.*, the Court of Quarter Sessions confirmed the order, subject, &c. *W. B.*, the pauper's father, being a married man, and settled in *C.*, let himself to Mr. *T.* of *B.* better than 14 years ago as a shepherd. He was to have for the first year 40*s.* for wages, 10 coombs of wheat and two of barley, produced on the farm, the going of 30 breeding ewes worth 10*l.* a year, and a cottage in *B.* rent free, worth 3*l.* 3*s.* a year. *W. B.* continued with Mr. *T.* for 14 years upon the same terms. The ewes were *W. B.*'s and fed with Mr. *T.*'s sheep, and went in the morning in the sheep-walk, and in the afternoon on the layers, and in the winter on the turnips, which were not drawn, but a certain portion of the turnip field was hurdled off and the sheep were then fed upon the turnips; but during winter, when from frost or snow it was necessary, they were fed with hay, though for several seasons the weather being open there was no occasion to feed them with hay. If *W. B.* had not had the cottage he would have had more wages, and it was convenient for him as a shepherd, as it was on the spot. *W. B.* hired every year one or two pages, over whom Mr. *T.* had no control; and about nine years ago when one *J.*, one of the pages, was to leave, *W. B.*, about a week before *Old Midsummer*, agreed with his son, the pauper, who was at that time 19 years of age and unemancipated, to serve him for a year from *Old Michaelmas* to *Old Michaelmas*, in *J.*'s place, at the same wages, 8*l.* a year, which time the pauper served and slept in *B.*, being then unmarried, in his father's house. — In *Rex* v. *Winslow*, upon an appeal against an order of two justices for the removal of *E. L.*, the wife of *T. L.*, and their two children, from *W.*, *Bucks*, to *B.*, *Hants*, the Court of Quarter Sessions quashed the order, subject to the opinion of this Court on the following case: *T. L.*, the husband of the pauper, when about 14 years old, being then unemancipated, was hired by his father, who was a sawyer residing at *B.*, but not having a settlement there, to assist him in his work as a sawyer. A contract was, in point of fact, made between them, whereby the son agreed to serve the father for a year at the wages of 2*l.* 10*s.*, his board and lodging being also provided by the father; he served this year with his father in *B.*, and received his wages, and at the expiration of this contract

served his father for two successive years, under new contracts, at increased wages. The question for the opinion of this Court was, Whether, under this hiring and service in *B.*, a settlement was gained by *T. L.*? — ABBOTT C. J. I am of opinion, that in each of these cases the pauper gained a settlement by hiring and service. It has been conceded that if the pauper had been previously emancipated he might have gained a settlement afterwards, by hiring and service with his father. But emancipation does not confer any capacity to contract, and the objection is that the son had not the power to contract with his father, although he might with a stranger. The contract of an infant made for his own benefit, according to general principles of law, is not void, but voidable only at the election of the infant. This differs from the case of the soldier which has been adverted to in argument; he is under the dominion of another, and owes all his services to the crown at all times, and a contract of hiring made by him is inconsistent with the duties he owes to the crown, and therefore void; but in this case the contract is not void but voidable only; and if an infant, therefore, may with the permission of his father enter into a contract with a third person, why may he not with his own father? And here the father, by taking him as his servant, gives his consent to the contract. There being no general rule of law declaring such a contract void, is there any thing in the settlement law to show that a settlement cannot be gained under such a contract? It is said, if a settlement may be so gained, it may enable a father to give to a son a settlement in a parish where he could not derive one from him. But there are other cases of the same description. It has been said, also, that our holding that a settlement can be so gained, may cause great confusion in Sessions law, and occasion much litigation and difficult questions at the Sessions. I cannot say that such may not be the case. Whenever such a case arises it will be the duty of the Sessions to look narrowly at the facts, and to consider whether there really was any contract of hiring and service; and one mode of ascertaining that, will be to consider whether the father had any occupation for a hired servant, and if he had no employment for the son as a servant, the Sessions may fairly conclude that there was no contract of hiring and service. In both the cases before the Court there is every reason to suppose that there was a *bonâ fide* hiring and service; for in one of them the pauper's father hired his son upon another servant's leaving him. In the other the father was a sawyer, and two persons are always required in that trade, and there were several successive contracts entered into between them at increased wages. It seems to me that there is fair ground to suppose that in these cases the paupers were really and *bonâ fide* hired as servants, and, therefore, that a settlement was gained. — BAYLEY J. This is the first time that this question has arisen; but it seems to me that the son was competent to contract with his father, and that all the legal consequences resulting from such a contract follow from the existence of the contract. It is clear that an infant may bind himself to a stranger. In that case the father may be supposed to concur, but it may be done without his concurrence. An infant may make a contract for his own benefit; he may therefore make a contract for hiring and service, for that will be beneficial to him. It will give him a right

to sue for wages. If he does not perform his contract, although no action may lie against him, he will be liable to the statutable regulations applicable to masters and servants. Then the question arises, Whether the relation of parent and child destroys the capacity to contract? It is clear that it does not do so in the case of emancipated children, or of natural children, or of step-children, *Rex* v. *St. Peter's, Dorset.* (*a*) And yet if a step-child is capable of contracting with his step-father, the same mischief results as if his own father consented: the same observation applies to emancipated children. If there be only a pretended service the Court of Quarter Sessions ought to conclude that there was no contract of hiring, and to decide against a settlement; but if there be a *bonâ fide* contract, it produces new rights and new relations. It gives the father a new right of control, and the child a right to wages, which is beneficial to him; and it also gives to him a settlement in that parish where he serves under the contract. — LITTLEDALE J. There is by law a species of service due from a son or daughter to the parent, which, as to the latter, is the foundation of the action of seduction, and there it is not necessary to prove actual service; and if there be any species of service due by law from the child to the parent, why may not the obligation of serving the parent be extended, by allowing him to hire the child at certain wages for a specific time? It is admitted that an infant may hire himself to a third person, but it is said, that being already under the control of the parent, and owing some services to the parent, the child cannot make a contract with him; but there is no reason why a child may not contract to render to a parent other services than those which are due in consequence of the relation of parent and child. That may be beneficial to the infant, and will, at the same time, also subject him to the statutable regulations applicable to master and servant. And if in point of law a child may hire himself, then the statute gives him a settlement resulting from the hiring and service. There may be some certain inconveniences resulting from our decision, but neither the common law nor the statute law say that such a contract shall not be binding. I therefore think that in both these cases a settlement was gained. My brother *Holroyd*, who has left the Court, desires me to say that he concurs in this opinion. — Order of Sessions quashed.

(*a*) *Post*, pl. 291

III. *Of the Contract of Hiring.*

267. *Rex* v. *Hamlet of Walton, E. T.* 9 *W.* 3. *Carth.* 400. — Two justices removed a boy of the name of *J.* from *C.* to the hamlet of *W.*, which lies within the parish of *C.*, and maintains its own poor. The Sessions, upon appeal, confirmed the order, and stated, that *J.* had been a foot-boy to Sir *P. J.*, in the hamlet of *W.*, for three years, or more, and had thereby gained a settlement there; that then Sir *P.* put him out to one *T.*, a barber, who lived in *C.*, but out of the hamlet of *W.*, for one year, to learn to shave; that the barber was to have the benefit of the boy's work; that Sir *P.* gave the master some money to teach the boy to shave; that the boy accordingly lived with the barber in the said parish for one year; but that no notice of his coming was given by him to the parish, nor any warning from them to him. The question

A boy put out by a master to a barber for a year, to learn to shave, does not, by serving a year, gain a settlement; for every hiring must be reciprocal. S. C. Fort. 214. Comb. 445. 5 Mod. 28. Foley, 111.

2 Salk. 479. Skin. 671. Cald. 368.

was, Whether this gave a settlement to the boy in the parish of *C.* as an hired servant, within the intent of the statute of 3 & 4 *W. & M. c.* 11.? — The COURT: This is not such *a hiring* or such *a service* as is within the intent of the statute; because here was no reciprocal *contract* between the *boy* and the *barber*, and he had no remedy to compel him to serve: for every hiring within that statute must be reciprocal; but here the boy was in nature of a *scholar*, and not of a *servant*. — The order of Sessions was therefore affirmed. (*a*)

A hiring made in an *extraparochial* place is sufficient. S. C. *post*, pl. 391.

268. *Rex* v. *St. Peter's, Oxford*, *T. T.* 8 *G.* 1. *Fol.* 198. — The pauper, *M. N.*, was hired at *C.*, an extraparochial place, on the 16th *May* 1717, to Mrs. *C.*, the mother-in-law of Dr. *C.*, the canon of *Christchurch College*. It was objected, that as this *contract* was made in an extraparochial place, it was not a contract of hiring within the words of the statute 3 *W. & M. c.* 11. *s.*6. which says, that if any unmarried person, not having child or children, shall be hired into any *parish* or *township* for one year, a service under such a contract shall gain a settlement. But THE WHOLE COURT held that the words "parish" and "township" were only put for example.

A hiring cannot be intended where no *contract* appears. S. C. 2 Sess. Cas. 120.

269. *Gregory-Stoke* v. *Pitminster* (*b*), *M. T.* 13 *G.* 1. *MSS.* — The pauper, who was a young girl, was sent to by a relation, who told her, that if she would live with her she should have her meat, drink, washing, and lodging. The girl accepted the terms, and lived with her four years as a servant. It was insisted, that the girl gained a settlement within the statute of labourers 24 *E.* 3. *c.* 1.; for that this *general retainer* made a good *hiring* within that statute, though not within the statute of 3 *W. & M. c.* 11. *s.* 6.; that the living *four years* amounted to a good retainer for *a year*; that the statute of 24 *E.* 3. *c.* 1. extends to all servants and apprentices (*c*); and that the actual entry into the service, after being sent to, and terms offered, is such an assent in the servant as amounts to *a contract*. — BUT THE COURT held, that there must be an *actual contract*, where the servant is under no obligation to stay, and the contract must be mutual to bind the parties: this is no *agreement*, but an encouragement to the poor girl, that if she would live with the relation she would maintain her. — FORTESCUE J. cited the case of *Rex* v. *Walton* (*d*), where Sir *P. J.*'s servant was put to a barber to learn the art of shaving, and after a year's stay it was held, that as there was no *contract* he did not thereby gain a settlement. (*e*)

(*c*) See 5 Eliz. c. 4.

(*d*) *Ante*, pl. 267.

A girl who resides with a relation in one parish, but works with a clothworker in another, in the business of burling cloths by a weekly hiring, is not a *hired servant*,

270. *Rex* v. *Wrington*, *M. T.* 22 *G.* 2. *Burr*, *S. C.* 280. — The pauper, when about 13 years of age, went into *Chew Magna*, to the house of her aunt *S.*; and soon afterwards went into the parish of *Winford*, and worked with one *N. W.*, clothworker, in the business of burling cloths, by a weekly hiring or agreement, at the weekly wages of 1*s*, 6*d*. in the winter, and 2*s*. in the summer. On the *Saturday* in each week, *W.*, when he paid the pauper her wages for that week, said to her, "that she should come the week "following;" which the pauper accordingly did, and renewed the contract for the week ensuing in the same method: the pauper

(*a*) The report of this case by Skinner is totally the reverse of what it ought to be. Note by Mr. Bott. See also Cald 363. *contra.*

(*b*) See Rex v. Dunton, *post*, pl. 281.

(*e*) See Rex v. Worfield, *post*, pl. 302.

continued to work with *W.* in *Winford*, in the manner abovesaid, for the space of one year and a half; but during all that time constantly returned in the evening, and lodged at her aunt's in *C. M.*, and also resided with her aunt there on *Sundays* during the said time. On the last *Saturday* of the service, the pauper covenanted to serve *W.* for a year, for the wages of 1*l.* 10*s.*, and immediately entered into the service, and continued therein with *W.*, in the parish of *Winford*, for 11 months next following; and then, upon some difference between them, they parted; and she was paid the full proportion of her wages for the 11 months.—LEE C. J. and WRIGHT J., said, their only doubt was, Whether, on these first hirings, the girl was to be considered as *a hired servant*, or whether she was to be considered as *a weekly labourer*, precedent to the hiring her for a year?—But DENNISON J. said, he had no great difficulty; for he thought the Court should not go an inch further than they did in the *case of Aynhoe*. (*a*) This is a little girl hired to burl cloth: probably 20 such children were so hired. The hiring was for a week: she lay at home, and was at home on *Sundays*. This was certainly as *a day-labourer*; not as a servant in the family, and part of the family. The act of parliament plainly means a hired servant, who is part of the family wherever he lies. I know this clothworking business; and am, therefore, afraid of the consequences of extending these settlements too far. These clothworkers hire, perhaps, a hundred children, in different parts of the work; and it would be very inconvenient if the hiring any of them for a year, after some time of service under a weekly hiring, and their subsequent service of, perhaps, only a single week under that yearly hiring, should gain them a settlement.—FOSTER J. thought the cases had been carried full far enough already; and had no doubt but the first hiring ought to be *ejusdem generis* with the last. Now a hired servant is always under the government, discipline, and control of the master, even on *Sundays*. But this child was not at all in this master's service either on nights or on *Sundays*.—The other Judges concurred.

although she continues to work week after week for a year and a half.

(*a*) *Vide post*, pl. 368.

271. *Rex* v. *Weyhill*, *H. T.* 33 *G.* 2. *Burr. S. C.* 491.—*R. Pyke*, of *W. M.*, took the pauper into his family, from charity, and gave him his meat, drink, lodging, and clothes, while he continued with him, which was about two years, in *W. M.*, and four years in *W.* (to which parish Mr. *P.* and his family removed). Neither at or before the time of *P.*'s taking the pauper into his family, nor at any time after, was there any contract between the parties in relation to the pauper's service of Mr. *P.*, or his continuance with him, or to any wages or other gratuity to be paid him. During the pauper's continuance with Mr. *P.*, he was employed in running of errands, and doing whatsoever Mr. *P.* or his servants thought fit to bid him: no wages were ever paid or given him.—THE COURT were clear that this was no hiring at all, no contract; but that he was taken out of charity, a child eight years old, to run on errands, and do whatever he was bid; and left Mr. *P.* when he came to be 14, and capable of doing more service. And it is expressly stated, "that there was no contract. (*a*)" Indeed, where there is a hiring stated, the Court will presume it to have been a regular

A *hiring for a year* cannot be inferred from a boy's being taken into a family, supplied with board and lodging, and made to run of errands, unless some *contract* appears.

See Rex v. Wincaunton, *post*, pl. 289. and Rex v. Berwick St. John, *post*, pl. 290.

(*a*) *Vide* Burr. S. C. No. 160. Rex v. Inhabitants of Berwick St. John, *post*, pl. 290. holden to be a hiring for a year, though the contract was not quite explicit.

one unless the contrary appears: and that was the case of *Wincaunton.*(a) A general hiring was there stated; but here there was no hiring at all.

(a) See *post*, pl. 289.

A *negro slave* brought into this country by the master does not gain a settlement by service with him here; for there is no *contract* for such purpose subsisting between them. 8. C. Cald. 516,

272. *Rex* v. *Thames Ditton, E. T.* 25 *G.* 3. EDITOR's *MSS.* — Two justices removed the pauper, *C. H.*, from *T. D.* to *C.* The Sessions, on appeal, quashed the order, and stated the following case: The pauper, *C. H.*, was bought in *America* by Captain *H.*, as a NEGRO SLAVE, and by him brought to *England* in the year 1781. In the month of *November* 1781, Capt. *H.* went to live in the parish of *T. D.*, and took the pauper with him; and she continued to live with him there in the capacity of his servant till *June* 7, 1783, on which day Capt. *H.* died. Soon after the death of her master she was baptized at *T. D.* by the name of *Charlotte Howe*, and she continued after his death to live with Mrs. *H.*, his widow and executrix, who afterwards removed to *C.*; at which place the pauper continued to live with her as before for five or six months, when she left Mrs. *H.*; during the whole of this time she was childless and unmarried. She was removed to *C.*, as having served the last 40 days in that parish: the removal was from *T. D.* to *C.* — MR. PALMER showed cause: It is sufficient to support the order of Sessions to observe, that no hiring is stated. There is no case where the Court has implied a hiring; they have only implied a hiring for a year, where a hiring appeared, but was indefinite as to time. But it is manifest from the circumstances of this case that there never was any contract at all. — THE COURT desiring to hear the other side, MR. LEE argued, that by fair construction of the statutes relating to settlement by service this case came within them. The principle of those acts was, that minute periods of service should not give a settlement, and bring a burthen on a parish. It must be where the party was under an obligation to serve for a length of time not less than a year. Slavery is defined by GROTIUS (a) to be an obligation to serve as long as the master finds maintenance. This doctrine of the law of nations was not contradicted by any authority in the law of *England*; such a perpetual contract to serve might exist in this country, and slavery was recognized by several statutes concerning the negro-trade. To show that the master's right to the perpetual service of his negro continued in this country, they cited 1 *Black. Com.* 127 and 425; and to prove the analogy between NEGROES and SERVANTS they relied on *Chamberlain* v. *Harvey* (b), where it was held, that *trover* would not lie for a negro, and that the master could maintain no action for taking him away, except an action *pro quod servitium amisit.* They said, the Court could not hold this to be no settlement without determining that a negro brought into this country was at liberty to leave his master at any time, which had never yet been determined; for the case of *Somerset* did not go so far. — LORD MANSFIELD. The case of *Somerset*, the negro slave, goes no farther than to determine that the master of such a servant shall not have it in his power to take him out of the kingdom against his will; for the moment a man lands in this country he becomes a subject of it, and every subject of this country is entitled to the freedom of personal liberty. The Court in their determination on that case reasoned by analogy to the law of *villenage*, and I have tried many actions brought by negro slaves against their masters for wages; but I never thought

(a) De Jure Belli & Pacis, b. 2. ch. 5. s. 29. part 2.

(b) Carth. 396. 1 Ld. Ray. 146. 5 Mod. 186.

myself justified by law in permitting them to recover. — THE COUNSEL FOR THE RULE answered, that certainly no wages were due, because there was no *contract* for them, but a settlement might be gained by service without wages; that although the term used in the statute was "*hiring*," and the contract in this case was a *purchase*, the meaning was in substance the same; where there was some reversion left in the owner, it was a hiring; where there was not, it was a purchase. The consideration paid to the seller included the wages for the whole life of the slave; the contract was made with the seller, and not with the negro; but there were several cases where one person may contract that another shall serve, as parish-officers, and the father of a minor. If negroes were to be considered as *villeins*, there was no reason to suppose them not objects of the poor laws; for although *villeinage regardant* be taken away by stat. 12 *Car.* 2. *c.* 24., *villeinage in gross* remained as before. If this pauper had gained no settlement, it would follow that all negroes could be maintained only as *casual poor*, and in that character they certainly would not be so well taken care of. — LORD MANSFIELD. This case does not admit of an argument. The Poor Law is a system of many acts of parliament. It began in the time of Queen *Elizabeth*, perhaps before *villeinage* was out of use: *villeinage in gross* may not, perhaps, be now abolished; but none of those statutes apply at all to *villeinage*: the legislature never thought of it. To give this pauper a settlement, she must come within the description of a positive law. Her being *black* or a *slave* is no objection, but the statute requires *a hiring*: there is none here, and therefore the case is not within the statute. — The order of Sessions was confirmed.

273. *Rex* v. *St. Mary, Guildford, E. T.* 25 *G.* 3. EDITOR'S *MSS.* — *T. F.* having a derivative settlement in *St. M.* went, at the age of eleven or twelve, to live with his uncle, who was a tailor, in the parish of *S. M.*, and worked for him, and learned his business. At the expiration of two years, his uncle proposed that he should become his apprentice, but they had some difference about it, and the pauper refused to be bound. However he continued to live with him, working in and learning his business till about the age of 17, and was provided with board, lodging, and necessaries. — THE SESSIONS thinking this a settlement in *S. M.*, quashed the order of two justices removing the pauper and his wife from *St. M. G.* to *St. M.* — This case came on immediately after *Rex* v. *Thames Ditton* (*a*), and MR. SYLVESTER, who was to have shown cause, said, as the Court had declared in that case that a hiring was necessary, it was impossible for him to support this order of Sessions. — THE COURT said that a *hiring* was certainly necessary, and that this was clearly no settlement in *S. M.* — Order quashed.

A boy living several years with his uncle, and working at his trade for his board, lodging, and clothes, but without any *contract*, does not gain a settlement.

S. C. Cald. 521.

(*a*) *Ante*, pl. 272.

274. *Rex* v. *St. Matthew, Ipswich, M. T.* 30 *G.* 3. 3 *T. R.* 449. — About five years ago, the waiter belonging to *S. R.*, who kept an inn in *St. M.*, being ill, sent for the pauper, *E. S.*, to assist him at the inn, where he stayed as *helper to the waiter* about six months, and then went away. The waiter being again taken ill, sent for the pauper *to help him*, which he did, and he continued in the inn as boot-catcher for 19 months, during which time he lodged and boarded there, and was to be satisfied by the

A man went to an inn with the knowledge of the master, to assist the waiter, who was ill, and continued there, boarding and lodging, nine-

teen months: the waiter went away in thirteen months; after which the man continued to serve, as he had done before, without making any agreement with the master. This service will not gain a settlement, for there was no *contract hiring* for a year, either express or implied, and he was only servant to the master the last six months.

gentlemen who came to the house. *R.* knew of his being there the night after he came, but nothing passed between him and the pauper at the time. The waiter who sent for the pauper continued in the service of *R.* till about *July* in the next year, when he went away, and the pauper continued there till the *Christmas* following; when *R.* and the pauper having some dispute, the former told him to go away, upon which he asked *R.* to give him something for the time he had been there. *R.* replied, he should not give him any thing, as he had made no agreement with him; but on being pressed again to consider his situation, he not having any thing to help himself, *R.* gave him *2l. 2s.*, and sent him away, and the pauper then left the house. The pauper considered himself not as a servant to *R.*, but as assistant to the waiter, and thought himself at liberty to go away when he pleased: he saw *R.* sometimes, who, if a guest wanted his boots, told the pauper to get them, and at other times sent him on errands. — LORD KENYON C. J. There never was a case like the present in which a hiring was presumed by retrospect. In the case, indeed, of *Rex* v. *New Windsor* (*a*), a *conditional* hiring with a proper service was held sufficient to gain a settlement: but there there was an express hiring by the master when the pauper first entered into the service. To some of the positions which have been laid down at the bar, I perfectly accede: as, that there is no necessity for a hiring by the *master himself;* that, if there be a hiring, it shall be presumed to be a hiring for a year, unless something appear to show that the contrary was intended; and that wages are not necessary to confer a settlement on the servant. But the foundation of the argument here is, that the pauper was the servant of *R.;* now that is expressly negatived by the facts of the case. For it is stated that the waiter, being ill, sent for the pauper, who went as *helper to the waiter;* and, after staying there six months, went away: and that the waiter being afterwards taken ill again, sent for the pauper, who went a second time to perform the business for the waiter. And here the question arises, upon the determination of which this case must turn, In what situation was the pauper at that time? The case states, that he came there *as helper to the waiter;* and there is nothing in the case from whence we can infer that he was the servant of *R.* Therefore, down to the time when the waiter went away, it is impossible to say that there was any agreement between *R.* and the pauper. It is true that we cannot refer the last six months of the pauper's service to any thing but a contract with *R.;* but that is not sufficient to give a settlement. If, indeed, the pauper had been before in *R.'s* service, and had then lived under a yearly hiring, making in the whole a year's service, that would have gained him a settlement. But here was no contract with *R.*, either express or implied, until the last six months. The case of *Rex* v. *Weyhill* (*b*) is not unlike this; there, indeed, the pauper was taken out of charity; but in that, as well as in the present case, the pauper was taken in such a situation as excludes *a hiring* by the master. In cases where the nature of the service implies a hiring, the Court will raise such implication; but the nature of the service here implies the reverse. Small circumstances, indeed, have been held sufficient to raise a contract; as where the master told the pauper to go "into *Ned Hill's* place," it appearing that

(*a*) *Post*, pl. 359.

(*b*) *Ante*, pl. 271.

Ned Hill had lived there as a yearly servant: but it is to be observed, that in that case there was some conversation between the master and the servant respecting the contract; but here there was none.

275. Rex v. *Stokesley*, *T. T.* 36 *G.* 3. 6 *T. R.* 757. — *J. P.*, the pauper, was born at *L. W.*, in the parish of *C.*, but not in wedlock, and was taken by his mother to *Haigh*, in the parish of *S.*, in the same county, and was kept there by her till she died; at which time he was about six years old. After his mother's death he went to live with her brother at *Mordon*, in the parish of *Sedgfield*, *as a relation, and not under any hiring*, being then about seven years of age; his said uncle farmed about 40*l.* a year, and set him to drive his plough the first or second day after he went to *M.*, and he continued working at the farm for the space of about eight years, but received no wages, or any other reward during that time, except meat and clothes; and he and his said uncle wrought all the work of the farm during the last three or four years of that period. The pauper having some words with his uncle shortly before *May-day*, went to *Darlington* hiring, and there hired himself to a Mr. *J. L.* of *Aircy Holm*, to be a servant in husbandry for one year, and he served the same at *A. H.* aforesaid accordingly. Shortly before the expiration of his service at *A. H.*, he received a letter from his uncle requesting his return to *M.*; and saying, that if he would come and live with him *as before*, he (his uncle) could surely make it as good or better for him than a common service. During the year the pauper served Mr. *L.* at *A. H.*, his uncle had no regular hired servant, but employed an elderly man as a labourer to lead his lime and manure, thrash his corn, and do such other work about his farm as he did not like to do himself; and which the pauper used regularly year after year as he grew in strength to do for him. Agreeably to his uncle's request he returned to him at *M.* as soon as he left his service at *A. H.*, and lived with him there about three years; at the expiration of which he went with his uncle to *Stokesley*, and lived with him there about four years and a half, during all which time he performed the greatest part of the work of the farm, as his uncle at that time kept no other servant, and was himself an elderly and infirm man. When the pauper returned from *A. H.* to *M.*, he made no agreement with his uncle either for what time or for what consideration he should serve him; but his uncle often promised him if he would stay with him for his life he would leave him his stock and crop and farm as his own, his uncle's son having got a good place, and being well provided for; and his uncle of course found him meat and clothes, and used to give him a few shillings when he went to market, or from home, but nothing more. The pauper left his uncle about the *Martinmas* time or a little after, and believed himself at liberty to leave him at any time; immediately afterwards he married, and has not gained any settlement since. At the time the pauper and his uncle parted they had no reckoning and did not part friends. — LORD KENYON. The facts stated in the special case negative any hiring: indeed that argument applies as well to the first as to the second service, and the justices have expressly said that there was no hiring during the first service. They also state that before the pauper returned to his uncle the

A man who, having lived with an uncle, upon charity, is hired as a yearly servant by another person, but returns upon a promise of the uncle, that if he would come and live with him as before, he would make it better for him than in common service, and that if he continued with him for life, he would leave him his farm and stock; and accordingly serves his uncle for several years, but receives no wages, gains no settlement thereby, for there was no *contract of hiring* between the parties.

latter proposed to him "to come and live with him as before," that is, in the same relation. This excludes the idea of any hiring for a year. I do not wish to break in upon those cases where it has been determined that a general hiring is a hiring for a year, or that a hiring under certain circumstances may be presumed; and if the justices in this case had found that there was a yearly hiring, it would have concluded the case. But here they have expressly found that the first service was not under any hiring, and that the second was "as before." And we cannot contradict these facts, and introduce our own conjectures on the subject, in opposition to this finding.

A pauper placed by the parish with a parishioner, upon an agreement between the latter and the parish officers to find board, washing, and lodging for the pauper at 2s. 6d. *per* week, and that the pauper was to do what he was set about, does not constitute the relation of master and servant between such parishioner and the pauper so as to enable the latter to gain a settlement as by hiring and service. Neither does such relation arise by implication from a continuance of services by the pauper to the parishioner; living with him as before, after the parish had refused any longer to continue the parochial allowance; and the pauper, who was a Greenwich pensioner, going there twice a year, without asking or receiving

276. *Rex* v. *Rickinghall* (*a*), *E. T.* 46 *G.* 3. 7 *East*, 373. — Two justices by an order removed *H. Saunders*, his wife, and daughter, from *Rickinghall Superior* to *Rickinghall Inferior*; which order was confirmed by the Sessions on appeal, subject, &c. The pauper *H. S.*, a *Greenwich* pensioner, settled in the parish of *Redgrave*, came there in the year 1801, disabled by the loss of a leg. On the 5th of *March* in that year the parish officers of *R.* agreed verbally with *Crowe* of *Rickinghall Inferior*, limeburner, that *H. S.* should live with him till the 8th of *November* following, and do for him whatever he set him about. The parish of *R.* agreed to pay *C.* 2*s.* 6*d.* *per* week, and *C.* to find board, lodging, and washing for *S.* Under these terms *S.* lived with *C.* till *Christmas* following, when *C.* went with *S.* to the parish officers of *R.*, and refused to keep him any longer unless they would increase the allowance. They consented to increase it to 4*s.* *per* week; and *C.* thereupon agreed to take *S.* again till the *Easter* following. *S.* returned and staid accordingly in the same manner. At *Easter* the parish of *R.* refused to continue *S.* upon an allowance, and thereupon *C.* sent him home to *Redgrave*, whence he returned to *C.*; and, without any new express agreement, continued to live with him in the same manner as before until *October* 15th, 1804, when he ceased to live with *C.* on account of his marrying. During the time that *S.* lived under the first agreement with the officers of *R.*, he attempted to absent himself from *C.* to make holiday; but *C.* told him he was his servant by the agreement with the parish, and that he could not go without his leave; which however he did. He went twice in the year to *London* to get his pension from *Greenwich* Hospital, and was absent about two or three weeks at a time. He used to tell *C.* when he was going; but he did not ask leave, nor did *C.* refuse. During the whole time *S.* lived with *C.* he was employed by him in chopping chalk. He did no work for any other person. He slept in the parish of *Rickinghall Inferior*, and received now and then sixpence from *C.* when he did little jobs for him on *Sundays*, and has done nothing since to gain a settlement. While *S.* was with *C.*, after the parish officers of *R.* had refused to continue the allowance, he received from them, on his application for relief, at one time 10*s.* 6*d.*, and at another 2*s.* 6*d.*; and once the parish officers of *R.* took for themselves his pension from *Greenwich* Hospital. The Sessions, besides confirming the order of removal, ordered the appellants to pay to the respondents the common costs of 40*s.*, considering the statute of the 8 & 9 *W.* 3. imperative on them in that

(*a*) See Rex *v.* Dunton, *post*, pl. 251.

respect. — FREERE, in support of the order of Sessions, proposed to consider, 1st, If the relation of master and servant existed between the pauper and *C.*; 2dly, If the pauper's absenting himself during the service prevented the settlement; 3dly, If the magistrates were obliged to give costs. Upon the latter the Court gave no opinion; and upon the first, finding the opinion of the Court strongly against him, as to the agreement between the parish officers and *C.*, he relied principally upon the service of the pauper with *C.*, from whence a general hiring was to be implied, after the parish officers had ceased to pay *C.* — But THE COURT (LORD ELLENBOROUGH C. J. absent) were clearly of opinion that no settlement was gained. The relation of master and servant never existed between *S.* and *C.* The former was placed with *C.* by the parish officers, as a pauper, to be maintained by him; and the parish officers had no authority to hire *S.* out to the other. And after the parish allowance for *S.* was withdrawn from *C.*, the latter permitted *S.* to live with him out of charity, without any contract as between master and servant. — ANDERSON, who was to have argued against the orders, was not heard. — Orders quashed.

leave of the parishioner; the latter, however, not refusing leave when informed of the other's going.

277. *Rex* v. *Stowmarket*, *H. T.* 48 *G.* 3. 9 *East*, 211. — Removal from *S. L.* to *S.* Order confirmed, subject, &c. The pauper being settled by birth in *S.*, was in the year 1801, a poor boy, at the age of 14, in the house of industry for the poor of the incorporated hundred of *S.* In this hundred the directors and acting guardians of the said house are empowered, by the act incorporating the hundred, to apprentice poor children for seven years. It does not appear that they ever exercised this power: but instead of binding the children apprentices when of sufficient age, they were sent out of the house to their respective parishes; and the parish officers allotted them during three years to particular parishioners, either to retain them in their own, or to provide them with other services. Some time before *Michaelmas* 1801, the pauper was sent by the directors and acting guardians of the house to Mr. *R.* of *S.*, to whom he had been previously allotted by the officers of that parish. Mr. *R.*, not having employment for the pauper, told him that he (Mr. *R.*) had procured a service for him with Mr. *J. F.* of *C.* The pauper made no objection to go, conceiving that he had no discretion on the subject. On the day after *Michaelmas*, the pauper went to Mr. *F.*, who received him, and told him that he would give him clothes, and that he was to stay with him a year. Nothing further passed between the pauper and Mr. *R.* or Mr. *F.* respecting wages, or the nature or duration of the service. The pauper continued in Mr. *F.*'s service as a farming servant till the following *Michaelmas*; receiving his clothes and maintenance, and now and then a little pocket-money. On the 25th of *September* 1802, the pauper was sent for by Mr. *S.* of *S.*, to whom he had been allotted (in the same manner as he had been in the former year to Mr. *R.*) for the following year. On the ensuing *Michaelmas* day the pauper went to Mr. *S.*, who gave him a holiday on that and the following day; and having no occasion for his service, Mr. *S.* told the pauper that he had procured him a service with a relation, Mr. *G.* of *B. E.* The pauper went to Mr. *G.* without making any application to the directors and acting guardians, or

A poor boy *allotted* by parish officers to a parishioner, who handed him over to another person, by whom the boy was told that he was to stay with him a year, to which the boy made no objection, *conceiving himself bound to accept such service*; does not gain a settlement by serving under this supposed obligation for a year.

to the parish officers, and continued with Mr. *G.* till *Michaelmas* 1803, in the same situation as he had done before with Mr. *F.* The pauper himself made no agreement with Mr. *G.* or with Mr. *F.* respecting wages, or the nature and duration of his service with them; nor was he consulted on the subject, either by Mr. *R.* or by Mr. *S*,. to whom he had been previously allotted; but conceived himself obliged to accept these services, as being under the control and jurisdiction of the house of industry and of the parish-officers of *S.*, where the directors and acting guardians had first sent him.— LORD ELLENBOROUGH C. J. All the parties seem to have acted under the idea that the boy was a parish slave, who might be handed over from one to another, and disposed of as they pleased, but there was no agreement by him to either of the services in which he was engaged: he submitted to them because he thought himself obliged to do whatever they bid him. If we were to hold this sufficient to give a settlement, we should establish a new head of settlement *by allotment*. The law gave these directors of the house of industry a certain power to apprentice out poor children; and instead of executing that power in a proper manner as the act directs, they assume to themselves a power to hand these children over to the officers of their respective parishes: who again hand them over to others; and so they are shifted from one to another. And now, because this boy has done the work which he was made to do, and eat the meat and worn the clothes which were provided for him, it is argued that he has adopted so many contracts of hiring, to which he was no party, and which were made without any consideration of his will and consent. But the adoption of a contract must be the act of a free agent: and at what period of time is he found by the case to have consented or contracted at all? On the contrary, it is stated, that when told by *R.* that he had procured a service for him with *F.* the pauper made no objection to go, *conceiving that he had no discretion on the subject.* And again it is stated that *the pauper made no agreement with* F. *or* G. *respecting wages, or the nature and duration of his service with them: nor was he consulted on the subject by either of the persons to whom he had been allotted; but considered himself obliged to accept these services, as being under the control of others.* Then can a person who is considered as a slave, and conceives himself to be such, be considered as having *adopted* the acts of his master? It is against common sense so to construe his involuntary acquiescence. In the cases alluded to, where the pauper's misapprehension of the contract of hiring has been held not to vary the legal effect of it, the pauper meant to exercise a contracting power, though he mistook the legal effect of the contract which he had made. — The other Judges assented: and LE BLANC J. added, that he hoped the consequence of this decision would put an end to the improper practice which the directors of the house of industry had adopted in sending the children out of the house to the respective parish officers to place out, instead of providing for them in the manner pointed out by the act. — Orders confirmed.

No settlement can be gained by serving under a contract of

278. *Rex* v. *Rushulme*(*a*), *M. T.* 49 *G.* 3. 10 *East*, 325. — The pauper was hired to *J. T.* of *Rushulme*, for four years, with liberty to leave a week every year to see his friends, and he served the four years accordingly. The question for the Court was, if the

(*a*) See Rex v. Turvey, *post*, pl. 334.

pauper had gained a settlement in *R.*—LORD ELLENBOROUGH C. J. Here is a hiring for a period of four years, with an exception of a week *in* every year; that is to be taken distributively, a week out of each year. Therefore the master had no dominion over the servant for any one entire year, but only for one year minus one week in that year, and so on. — Orders quashed.

hiring for four years, with liberty for the servant to leave for a week every year to see his friends.

279. *Rex* v. *Horwick*, *H. T.* 49 *G.* 3. 10 *East*, 489. — Removal from *Horwick* to *Heapy*. Order quashed, subject, &c. The pauper was hired as a bleacher and crofter for a year, at the wages of 12*s.* a week, to serve Messrs. *A.* & *B.*, whose works are at *Heapy*. This was all that passed at the time of hiring. He continued in such service for the year; residing in *Heapy*, but not in his master's house; and was employed to do the general crofter's business. In these works each bleacher is directed by his masters to get up a certain number of pieces within the week. The task set is calculated at the rate of so many pieces a day for six days. The man is not stinted to hours; if he finish his work in less than the time appointed, the rest of the time is his own, to do as he pleases: if he do more than the appointed work, he receives for over work. Having neglected his work in the week days, the pauper has occasionally made up for his loss of time by working on *Sundays*; but this was his own act and deed. The pauper on *Sundays* went where he pleased, without asking his master's leave. Messrs. *A.* & *B.* never engaged or employed their bleachers to work on *Sundays*. They had nothing to do with them on *Sundays*. — LORD ELLENBOROUGH C. J. If the argument be pushed to the extreme, there is not any contract of hiring in which there is not some implied exception. The law of the land breaks in upon such contracts as these on the *Sundays*, and the master in this case had as much right to the pauper for the whole year as the law of the land will allow of. The distinction, however, is clear, between this and the cases relied on. Here is an express hiring for a year, and no express exception in the contract of any part of the year. But this is an attempt to introduce an implied exception from the practice of the particular house of manufacture in which the servant was engaged, though implied exceptions in the times of service, by the custom of the country, have been held not to break in upon general contracts of hiring for the year. — Order of Sessions quashed.

Under a hiring and service for a year, the servant gains a settlement, though by the practice of the manufactory, when he has finished his appointed week's work, and on *Sundays* he may go where he pleases, without asking leave; for it is an express contract for a year, without an express exception.

280. *Rex* v. *Overnorton*, *E. T.* 52 *G.* 3. 15 *East*, 347. — Removal from *O.* to *R.* Order quashed, subject, &c. On *Monday* after *Michaelmas-day*, viz. *October* 17, 1803, the pauper was hired to serve Mr. *J.* of *O.*, for *the year*, at 9*s.* 6*d.* *per* week. He served under that hiring, and regularly received the 9*s.* 6*d.* every week, till the 13th of *October*, on which day, for the last time, he received 9*s.* 6*d.* Three or four days previous to the 13th of *October*, he had a conversation with his master, and agreed to serve him for *another year*, at 10*s.* a week. On the 20th of *October* he received 10*s.*, concerning which no explanation took place at the time; but the pauper said that he received it under the *new* hiring. He continued in the service all that year and seven weeks after. He was married eight weeks after the first hiring. — GROSE J. Whatever the decisions might originally have been upon the construction of the statute, the rule of law is now inveterate, that if the justices find a hiring for a year, and a continued service for a year, though not under the same hiring, that is decisive to give a

An unmarried man agreed on the 17th of *October* 1808, to serve a master for *the year*, at 9*s.* 6*d.* *per* week, and received those wages till the 13th of *October* 1804, three or four days before which (having in the mean time married) he agreed with his master to serve him for

another year at 10*s.* a week, which sum he received on the 20th of *October*, and served more than a year afterwards: Held, that this was evidence upon which the Sessions might draw the conclusion that the original hiring was for the space of a year, and not merely for the current year of 1808, and that there was a sufficient service of a year, coupled with such hiring, to gain a settlement.

settlement. — LE BLANC J. The Sessions would have done better not to have found any special case; for, strictly speaking, it is a question of fact, whether the first contract was to be for a year, or only to the end of the current year. But if they thought it was only to endure to the end of the current year, they would have come to a different decision. But, however equivocal the expression might have been at first, when the master and servant on the 13th of *October* in the following year, spoke of a contract for *another year*, that showed that they intended a yearly hiring. Then there was clearly a continued service of the same description for a year. — BAYLEY J. The Sessions were the proper judges to draw the conclusion, as to whether the original contract was dissolved before the end of the year; and I cannot say they have done wrong. There was no reason for dissolving it. — Order of Sessions confirmed.

Where a poor boy of A agreed with a parishioner of B to go home with him, and do whatever he was bidden (nothing being said about wages or time, and no subsequent agreement being made) he gains a settlement by a year's service in B, although the overseer of A, a day or two after such agreement, undertakes with his master to find the boy in clothes, for which the master agrees to pay to the overseer a certain sum *per* week.

281. *Rex* v. *Dunton*, *E. T.* 52 *G.* 3. 15 *East*, 352. — Removal from *I.* to *D.* Order confirmed, subject, &c. The pauper being settled in *D.*, one *Smith* said to him, "Are you willing to go with "me, and bind hay or thatch, or do whatever else you are bidden?" The pauper said he was willing; and *S.* took him home to his house in *I.* This happened a little before *Michaelmas* 1809, and the pauper was then about 16 years of age. Nothing was said about wages; and neither then, nor at any other time, was any other agreement made between the pauper and *S.* A day or two afterwards *S.* said, "I see you are in a bad state about clothes; if you cannot get clothes, I cannot keep you." The pauper replied, "The overseer of *D.* will find me clothes." On the next day the pauper and *S.* went to the overseer, who undertook to provide clothes, and asked *S.* what he would give him a week. *S.* engaged to pay 1*s.* a week to the overseer, *for the parish, on account of clothes found.* The overseer then gave an order for the clothes the pauper wanted. The overseer, in the presence of *S.*, asked the pauper if he went willingly into *S.*'s service. The pauper replied that he did. *S.* during the service occasionally gave the pauper small sums. About four months after the pauper had been in the service of *S.*, the latter, unaccompanied by the pauper, and without his knowledge, went to the overseer and told him that he could not keep the pauper any longer if he was to pay the 1*s.* a week. The overseer released *S.* from the payment, and the pauper staid the year out in *S.*'s service. At *Michaelmas* 1810, *S.* said to the overseer he would have the pauper no longer without fresh clothes: to which the overseer said that he must wait till the town meeting, which would take place in a fortnight. The overseer then asked the pauper if he was willing to live with *S.* another year? He said that he was willing, as he used him very well. The overseer asked *S.* to make the pauper some allowance. *S.* promised to give him a pair of shoes, and to do the best he could for him. The pauper served the second year with *S.* who gave him a pair of shoes, and laid out 1*l.* 8*s.* 6*d.* in the purchase of clothes for him. — It was contended in support of the orders that there was no contract of hiring between the pauper and *S.*, but that the contract, if any, *was between S.* and the overseer: and the cases of *Gregory*

Stetson *Pitminster* (*a*), and *R.* v. *Rickinghall Inferior*, were cited. — GROSE J. The question is, Whether the contract was made by the master with the boy, or with the overseer? Now, the boy offered and declared himself willing to serve the master, and the master agreed to take the boy, before any intervention of the parish-officer: and though facts were afterwards stated to show that reference was made to the officer, yet that was only to enable the boy to make the contract by getting clothes from the overseer, without which the master refused to keep him. — LE BLANC J. Here there was an original agreement for hiring and service between the boy and his master, before the overseer knew any thing of the matter; how then can it be said to be a contract made between the master and the overseer for the letting out of the boy, without the real assent of the latter. The law, indeed, says, that an overseer cannot contract for the services of the pauper without his consent; but there is no law which says that an overseer may not furnish the pauper with clothes to enable him to make a contract of hiring with another. When *S.* objected to keeping the boy for want of clothes, the latter said he would apply to the overseer, who was to him in *loco parentis:* and it is true that when the master met the overseer, it was agreed between them that the master should pay the other 1*s.* a week for the parish, to reimburse them the expense of the clothes: but the overseer himself, in *S.*'s presence, asked the boy if he were willing to go into *S.*'s service; and the boy answered that he was willing. — BAILEY J. The boy acted throughout *suo jure:* he chose his own master, and fixed his own terms: and, therefore, I can see no objection to his gaining a settlement under the contract of hiring made by him. — Order quashed.

(*a*) *Ante*, pl. 269.
(*b*) *Ante*, pl. 276.

282. *Rex* v. *Bilborough* (*c*), *M. T.* 58 *G.* 3. 1 *B.* & *A.* 115. — Removal from *Basford* to *Bilborough*. — Order confirmed, subject, &c. — The pauper's settlement in the appellant parish having been established by evidence, it was proved, that the father of the pauper subsequently made the following parol agreement with one *W. S.*, that *S.* should teach the pauper to make stockings during the year next ensuing, and should receive the sum of 2*l.* 2*s.* for such instructions; that the pauper should have his earnings, and pay *S.* for the use of his frame, needles, and other utensils, and and for seaming such stockings as the pauper should make. One guinea was paid at the time, and the other 1*l.* 1*s.* was to be paid by instalments of 1*s.* a week during the continuance of the agreement. The pauper went to learn the business, and work for *S.* in the manner specified, and continued to do so a year and a half, during which time he paid the second 1*l.* 1*s.* at 1*s.* *per.* week, and the stipulated price for the use of the frame, &c. during the year and a half the pauper resided in the respondent parish. — LORD ELLENBOROUGH C. J. In this case the pauper never contracted to serve the master, the only agreement was, that the master should teach the pauper for a year. In *Rex* v. *Burbach* (*d*), there was an agreement on the part of the pauper to work for two years: that forms an essential distinction between the two cases. — Order of Sessions confirmed.

Where, by a parol contract, the master agreed to teach the pauper to make stockings during the year, for which he was to receive 2*l.* 2*s.*, and the pauper was to have his earnings, paying his master for the use of the frame, &c., and the pauper continued in the service a year and a half, it was holden that the pauper did not gain a settlement by hiring and service.

(*d*) *Post*, pl. 513.

283. *Rex* v. *Sow*, *M. T.* 58 *G.* 3. 1 *B.* & *A.* 178. — Removal from *C.* to *S.* — Order confirmed, subject, &c. — The pauper

Where a female natural child was hired for a

(*c*) See Rex v. St. Mary Kidwelly, *post*, pl. 387.

year by the wife of its reputed father, and continued doing the household work for three years, but after the first year no wages were paid, nor was there any new contract of hiring: Held that the Sessions were warranted in finding that after that time she did not continue on the terms of the original hiring.

being settled at *K.*, was hired, in *November* 1812, by the wife of *D.*, of *S.*, for a year, at 50*s.* wages, and what clothes Mrs. *D.* pleased. Previously to this hiring, the pauper, who is a natural daughter of *D.*, lived with her mother at *K.*, and the hiring was for the purpose of gaining a settlement in *S.* As soon as she was hired, she went into the service of *D.*, served him for a year, and continued to live with him until the month of *July* 1816, when she went away; during the whole of which time she did the household work, as she did during the first year, but no conversation took place between the parties about hiring after she was so hired as aforesaid in *November* 1812, and there was no second hiring, unless from continuance in the service of *D.* a hiring ought to be implied, which, in the opinion of the Sessions, under the circumstances stated, it ought not. Some months after the expiration of the first 12 months, *D.* gave the pauper 5*l.*, 50*s.* thereof for the first year's wages, and desiring her to keep the remaining 50*s.*, and say nothing about it. The pauper never afterwards received any sum on account of wages, but received at different times clothes and pocket-money. *D.* at *Lady-Day*, 1816, removed with his family to the hamlet of *C.*; the pauper removed with them, and continued to live with them till the month of *July*. The Court of Quarter Sessions further find, that there was no fraud in this case. — LORD ELLENBOROUGH C. J. I cannot set the Sessions more right than they have set themselves. They have drawn the right conclusion from the facts before them; the pauper was hired for a year, and 50*s.* were paid to her; that was paid with another sum, and there is no question that the one sum was paid as wages, and the other as bounty; it is true that the service continued the same, but there was not any hiring for the second or any subsequent year. Not being able to find fault with the inference which the Sessions have drawn, I think there is no ground to disturb the order. Suppose an action had been brought by this servant for wages due to her for her service during the second year, and the jury had done what the Sessions have done here; the Court upon motion would not, under the circumstances of this case, have granted a new trial. Although the service continued the same, there was not a hiring for the second year as there was for the first. — BAYLEY J. I think the Sessions have done perfectly right; where the parties are not related, it may fairly be presumed, from a continuance in the service, that the terms on which they continued are the same as during the preceding year. But where the relation of father and child subsists, the ground for that presumption fails, and here there are a variety of circumstances to show that there was not any new hiring. The parties were living during the second year upon different terms from what they lived during the first. — ABBOTT J. I think the Sessions were perfectly justified in deciding this case as they have done, inasmuch as after the first year, the pauper was living as a child with her parent, and not as a servant with her master. — HOLROYD J. It was the province of the Sessions to draw their own conclusion and I think they have drawn it rightly. — Order of Sessions confirmed.

To make a valid contract of hiring and service, it is not ab-

284. *Rex* v. *Houghton-le-Spring*, *H. T.* 59 *G.* 3. 2 *B.* & *A.* 375. — Removal from *Houghton* to *Harraton*. — Order quashed, subject, &c. — The pauper, on the 12th day of *October* 1805, duly executed, together with 61 other persons, a deed, which purported

to be an indenture, whereby it was witnessed, that they whose names or marks were thereunder written, and seals affixed, for and in consideration of one shilling a piece then received, and of certain wages to be paid to them, had hired and bound themselves to *T. C.*, to be his servants, workmen, barrowmen, hewers, and putters of coal, or drawers of horses, from the 18th of *October* next ensuing, till the 18th day of *October* 1806. This deed was executed by pauper, but it was not signed by *T. C.* The pauper entered into the service of *T. C.* in pursuance of the deed, on the 18th of *October* 1805, and continued in that service till the 18th of *October* 1806, and received the wages specified in the deed, and lived, during the whole of his year's service, in the township of *Harraton*. The Sessions thought that the deed was not legally admissible in evidence, because it was not executed by *T. C.*, and considering further, that without it there was no sufficient evidence of a hiring for a year, they quashed the order. — BAYLEY J. The only question in this case is, Whether the execution of the indenture by the servant only is sufficient to constitute a valid contract of hiring? Now, in order to do that, there must be an obligation both on the part of the servant and the master; here it is admitted, that the execution by the servant bound him to serve for a year, and the objection is only that the master was not equally bound to keep him. But if the master, knowing the terms by which the servant is bound, accept his service, then I apprehend that the agreement must be considered binding on him, although he has not executed the deed. For it is laid down in *Co. Litt.* 230 *b.* n. 1., that a party who takes the benefit of a deed is bound by it, although he has not executed it. But the Sessions have not found the fact, that the master had this knowledge: and although it is probable that they would have found it, still, having stopped the case *in limine*, it must now go back to them to have this fact determined. Their proper course would have been to have received the deed in evidence, and then to have permitted the party to have proved such facts from which the knowledge of its contents by the master, and his acceptance of the service on those terms, might be inferred. — HOLROYD J. The only difficulty in this case is, that the Sessions should have found the fact of the acceptance of the service by the master, under the terms of the deed. It is stated, that the servant continued in the service for a year; and if it had been found, as a fact, that the master was cognizant of the contents of the deed, his receiving the servant in pursuance of it, would, in point of law, have been a receiving him on the terms therein contained, which would be sufficient to confer a settlement. It is, however, for the Sessions to find these facts, and to draw this inference. — Case sent back to Sessions.

solutely necessary that the contract, when by deed, should be executed by the master: it is sufficient that he accepted the services on the terms of the deed; and, therefore, where a pauper executed a deed, by which he became *bound* to serve the master for a year, and afterwards entered into and continued in his service for that period, it was held that such deed, although not executed by the master, ought to have been received in evidence to show the terms of the hiring.

285. *Rex* v. *Christ's Parish*, *M. T.* 5 *G.* 4. 3 *B. & C.* 459. — Two justices made an order for the removal of *H.*, *J.* his wife, and *A.* their daughter, from *St. M. G.* to *C.* parish, and upon appeal the Sessions confirmed that order, subject, &c. The father of the pauper was settled in *C.* parish, and the pauper lived with his parents till he was about 10 years old, when he went to Mr. *P.* for meat and clothes, so long as he had a mind to stop. *P.* then lived at *Craik*, and was a wood-carrier, and had two farms. The pauper was to do what he could, and what he was bid. He staid

A B, at 10 years of age, went to C D, for meat and clothes, *as long as he had a mind to stop*; he was to do what he could, and what he was bid.

A B remained two years with C D upon these terms: Held, that there was no yearly hiring, and, therefore, no settlement gained by the service.

rather more than two years in *P.*'s service in the parish of *C.*, and was supplied with meat and clothes. The pauper's father did not hire his son to *P.*, and believed that the bargain was only for meat and clothes. The Court being of opinion that such service in *C.* was not sufficient to give the pauper a settlement there, confirmed the order as aforesaid. — ABBOTT C. J. It must be admitted that a general hiring is a hiring for a year, unless something appear to rebut the presumption. Here the pauper might have left at any time, and that completely negatives the idea of there having been a hiring for a year. — BAYLEY J. In *Rex* v. *Trowbridge*, which was decided in 1816, but is not reported, it was held that a hiring "for as long a time as the pauper pleased," was a hiring at will, and excluded any presumption of a yearly hiring. This is a similar case, and I am therefore of opinion that no settlement was gained under the service stated. — LITTLEDALE J. concurred. — Rule discharged.

A pauper was hired three weeks before *Martinmas*, at 4*l.* wages, and received 1*s.* earnest, but no period was mentioned for duration of the service. The pauper went into the service a week after *Martinmas*, and upon the same day his master told him that it was not the custom to hire servants in that parish for more than 51 weeks, that he forgot to mention it at the time he hired him, and, therefore, that if he had no objection, he would hire him again for 51 weeks, and gave him another shilling for earnest. The pauper accepted it, and remained in the service till the following *Martinmas*. There not having been a year's service, the Sessions held, that there

286. *Rex* v. *Bottesford*, *E. T.* 6 *G.* 4. 4 *B.* & *C.* 84. — Upon appeal against an order of two justices for the removal of *W.*, and *M.* his wife, from *Bottesford* to *East Bridgford*, the Court of Quarter Sessions quashed the order, subject, &c. — The pauper, *W.*, was hired at the *Bingham* Statutes, which happened about three weeks before *Martinmas* 1818, to serve one *H.*, of *East Bridgford*, as a servant in husbandry, for the wages of 4*l.*, and received 1*s.* earnest; but no time was mentioned for the duration of the service. He was to go into the service about a week after *Martinmas*, at the regular time for husbandry servants to enter their places. The pauper, who was the only witness examined by the respondents, stated that he entered into the service a week after *Martinmas* 1818; that on the same day on which he arrived at his master's house his master said to him, "It is not the custom "to hire servants in this parish for more than 51 weeks, which I "forgot to mention to you at the time I hired you at the *Bingham* "statutes; and therefore, if you have no objection, I must hire you "afresh for 51 weeks, and give you another shilling for earnest;" when the pauper accepted of such earnest. The pauper was never out of *H.*'s service from the first moment he came upon the premises, and remained therein at *East Bridgford*, until the day after *Martinmas* 1819, when he quitted his place along with other servants, having first received his wages of 4*l.* — ABBOTT C. J. I think the conclusion drawn by the Sessions was right. I agree that originally there was a contract operating as a hiring for a year, but the service under it was a service commencing a week after *Martinmas*. It is stated in the case that the pauper was hired three weeks before, but that he was to go into the service a week after *Martinmas*. There is nothing to show that the service was intended to commence sooner. Assuming that there was a hiring for a year, to commence a week after *Martinmas*, it is quite clear that there had not been a year's service. Then, has the master dispensed with the service for the last week, or was the original contract rescinded? It appears that on the same day on which the pauper arrived at his master's house, the latter said to him, "It is "not the custom to hire servants in this parish for more than 51 "weeks, which I forgot to mention to you at the time I hired you at "the *Bingham* Statutes; and therefore, if you have no objection, I "must hire you afresh for 51 weeks, and give you another shilling

"*for earnest*;" when the pauper accepted of such earnest. I consider that to have been a dissolution of the original contract, and a substitution of another. If this amounted to a fraud (although I I have great difficulty in saying what is fraudulent conduct in this respect), the Sessions ought to have found fraud. They have not done so. I perhaps should not have interfered to set aside the decision of the Sessions if they had drawn a different conclusion, but I should not have been so well satisfied with it. — BAYLEY J. I think this was a point for the decision of the Sessions, and I wish that the justices at Sessions would understand that it was their duty to determine questions of fact, and not to send them to this court for decision; they thereby put the parties to unnecessary expence. I agree that there may be a dispensation with the service at any period of the year, but whether there was so or not was a question of fact which ought to have been determined by the Sessions. I cannot say that they have improperly said there was not. Had they found that there was a contract of hiring under which the service was to commence at *Martinmas*, and the servant by leave went to the master's service a week later, the Court might have come to a different conclusion. So if there was originally a contract for a year that might be dissolved. Whether it was so dissolved or not, was a question for the Sessions. If this was a fraudulent agreement, the Sessions ought to have found the fact of fraud. The question in this case was for the Sessions, and I cannot say that their determination is wrong. — HOLROYD and LITTLEDALE Js. concurred. — Order of Sessions confirmed.

had been a dissolution of the original contract, and not a dispensation of the week's service: Held, that that was a question of fact for the Sessions, and they having determined it, the Court refused to disturb their decision.

287. *Rex* v. *Warminster*, *M. T.* 7 *G.* 4. 6 *B.* & *C.* 77. — Upon an appeal against an order of two justices, whereby *W. M.* and his wife and children were removed from *H.* to *W.*, the Sessions confirmed the order, subject, &c. The pauper was born a bastard in the parish of *T. G.* When about 25 years of age he hired himself to *J. T.*, a solicitor of *W.*, as a gardener. At the time of the hiring *J. T.* asked the pauper what he should give him a week; the pauper asked 20*l.* a year wages, which *J. T.* refused to give, but said he would give 6*s.* a week for the winter, and 9*s.* a week for the summer, which the pauper agreed to take. He was to be in *J. T.*'s house. Under this hiring the pauper served more than a year, living in the house. He and his master then came to a fresh agreement for weekly wages without board, and about a week afterwards *J. T.*, upon detecting some irregularities among his servants, discharged the pauper without notice. *J. T.* made at the time, in a book kept for that purpose, entries of the several facts as they occurred, which were as follow: "*W. M.* agreed "with him as a gardener, into house, at 6*s.* a week in the winter, "and 9*s.* a week in the summer. Came *Monday* 2d of *November* "1818. Agreed with him 6th of *November* 1819 (which was a "*Saturday*) to give him 8*s.* a week winter, and 9*s.* in the summer. "4th *July* 1820, went out of house as labourer at 18*s. per* week, and "left my service shortly after." During the service under the first hiring the pauper on one occasion gave his master a month's notice of his intention to quit, but the notice was not acted upon. The wages were accounted for weekly, but paid occasionally, as they were wanted and applied for by the pauper. The question was, Whether there was a hiring for a year in *W.* or not? — ABBOTT C. J. The cases cited (*a*) are decidedly in point; but without them

A hiring at 6*s.* a week for the winter, and 9*s.* a week for the summer, nothing being said as to the duration of the service, is not a yearly hiring.

(*a*) Rex *v.* Dedham, *post*, pl. 292.

Rex v. Pucklechurch, *post*, pl. 327.
Rex v. Dodderhill, *ante*, pl. 142.

there is sufficient in this case to show that the master never intended to hire the pauper for a year. To a question asked by him as to the wages the pauper expected *per* week, the latter replied 20*l.* a year. The master refused to give that, but offered a certain weekly sum, which the pauper accepted. That clearly negatives the supposition that a yearly hiring was intended. — Order of Sessions quashed.

IV. *Of general Hiring.*

A boy goes into service without any express hiring, and his master tells him that if he stayed a year he would give him a livery and wages. This is an implied *general hiring* for a year.
S. C. 2 Sess. Cas. 188.

288. *Wandsworth* v. *Putney*, *E. T.* 13 *G.* 2. *MSS.* — A special order of Sessions stated, that *A.*, the pauper, at 14 years old, went to live with *F.*, in *W.*, in 1726, where he had meat, drink, and lodging; that *F.* bought him nine shirts; that in about six weeks or two months after his first coming, *F.* told him that if he stayed a year, and behaved himself well, the next year he would give him a full livery and wages: that afterwards he lived a year and four months with *F.*; that he lived in the whole with *F.* in *W.* one year and six months, and then parted from *F.*, and received from *S.*, *F.*'s partner, 1*l.* 11*s.* 6*d.*; and that there was no other contract for hiring appeared, or payment of money, otherwise than as above; the Sessions allowed the appeal of *W.* parish, and quashed the order of the justices for the removal from *P.* to *W.* — CHIEF JUSTICE: There is no doubt at this time of day to be made, but that in order to gain a settlement there must be *a hiring for a year*. The question is, Whether, in point of construction of the fact returned in this order, it does not amount to a hiring for a year? It is not stated in the order that there was an express hiring, and it is objected that this cannot be considered as a hiring, which imports a contract: for that nothing is said in this order of the assent of the boy. But the question is, Whether the contract afterwards is not an assent in point of fact, as much as if he had assented at the time? In the case of *New Windsor* (*a*), the order stated, that *A.* was hired in *August* 1731 to serve *B.*, but was not hired for any determinate time, and that she was to have 5*l.* a year wages; that she was to be one month with *B.* upon liking: and that *B.* might discharge her at a month's warning, or on paying her a month's wages: this is all that was stated to prove a hiring for a year; for, as to the service, it is immaterial whether it was one or several hirings; and by Lord *Hardwicke* C. J. *et* TOT. CUR. this did amount to a hiring for a year; and in that case was cited the case of *Lidney*. (*b*) *A.* was hired for a quarter of a year, and if the servant and master liked one another, the servant was to continue for a year, and to have 3*l.* wages; that she continued a year, and it was held a good settlement: now these cases seem to be very strong, that it is to be considered a hiring when the conditions are performed; for if he behaved well he was to have an additional reward, for he had a reward before, which was his meat, drink, and lodging, and the nine shirts: therefore, upon these authorities, I think this is a hiring for a year within the statute; for if we go only according to the strict words, that a man must hire expressly for a year, we shall defeat a great many settlements; and as this was a conditional hiring, and the condition performed, I think it is an absolute hiring for a year. — PAGE J. This, before the promise, was no hiring, only he was taken upon charity, and

(*a*) *Post*, pl. 359.
(*b*) *Post*, pl. 358.

afterwards the master promised, if he behaved well, he would do so and so: this seems to me not to be a hiring, but only a promise of reward. — CHAPPLE J. This is certainly a hiring, but there is some doubt for how long: the act of parliament requires a hiring for a year. At first he is under no contract, but has meat, drink, and lodging, during his continuance with *F.*; and *F.* tells him, that if he staid a year and behaved well, the next year he would give him a full livery and wages. Now, it seems to me, the boy was at liberty whether he would stay or not, and there was no obligation upon him to stay a year; he might if he would, and if he did stay and behave well, then the next year the contract was to take place: this is a contract by his staying the year; but there is no service for a year under any contract; here was a hiring for a year: service may be under different hirings, but it must be under some contract or contracts, and for a year; therefore, as this contract did not commence till the next year, I am in a doubt whether this is such a hiring and service for a year as the act requires. — CHIEF JUSTICE: I apprehend, that if there be a contract for a year, it is no matter whether the service is under the particular contract; for all the law requires is, that he shall be *a hired servant*; and the reason is, because he shall be entitled to a settlement, if any body will put such a confidence in him as to hire him: and the reason he is entitled to a settlement on account of his service is, because of the benefit the parish receives by his labour: the cases are, if one be hired for half a year, and serve the half year, and afterwards is hired for a year, and serve half that year, it will be sufficient if he serve a year in the whole. (*a*) — PAGE J. He was not a servant under any hiring for a year. *Cur. adv. vult.*—This case being argued again, the CHIEF JUSTICE said, It is no where stated that the boy was a servant, but only that he lived with *F.*: this is not a proper manner of stating the fact: they should state whether he was a servant or not: indeed, I have no great doubt but he was there as a servant. The main question is, Whether here is sufficient for the Court to say this is a hiring for a year? There is no doubt but there must be a *hiring for a year*, and *a service for a year*, to make it *a settlement*. The statute 3 & 4 *W.* & *M.* *c.* 11. *s.* 7. says, that "If any unmarried "person, not having a child or children, shall be lawfully hired "into any parish or town for one year, such service shall gain a "settlement without notice." The construction of the act has always been, that if one is hired for a year, the words *such service* are answered by a service for a year, though it is not pursuant to the hiring; that is, any service where there is a hiring for a year. By the subsequent act 8 & 9 *W.* 3. *c.* 30. they do not gain a settlement unless they continue in the same service for a whole year: this has been held an explanatory act, and though it is to be construed strictly, yet not so but that the intent may be answered: so, where a servant is assigned to the assignees of a farm, that is considered as the same service, being under a contract whereby he is bound for a year. (*b*) The question then is, Whether this is a hiring for a year? I shall take it that he was there as a servant, and as if a service had been stated: if it is not to be considered in that way, the order must be sent down again to the Sessions: this seems to be the common and usual way of hiring, a general retainer of a servant, though there is no particular time agreed,

(*a*) See the cases of *service* under *several hirings*, *post*, sect. ix.

(*b*) As to *service* with *different masters*, see *post*, sect. xi.

and a hiring for a year; then it is that *F.* told him, if he stayed a year and behaved well, the next year he would give him a full livery and wages; he comes and serves him. This must be considered as a hiring for a year, though not particularly said so, and he staid with him above a year after this; so that is a service for more than a year. In *Rex* v. *Lidney* (*a*) there was no hiring for a year, only for a quarter; and, if they liked, she was to continue for a year, and to have 3*l.* wages; so there was no express hiring for a year; but for a quarter only; and there the servant liking and continuing, it was determined that it was a hiring for a year. So in *Rex* v. *Windsor* (*b*), it was no express hiring for a year, only hiring to serve *B.*, and to have 5*l.* a year wages. As here is an agreement to give a servant livery and wages, I do not know that it is necessary, in order to make it a good hiring, that the *quantum* of wages must be agreed: if the words, that "he would give him "a livery and clothes," are a retainer, this is a good hiring for a year. (*c*) Upon these cases of hiring we must consider these contracts, which do not specify any time; but where it is a hiring generally, it is to be understood as a hiring for a year. If this is a good hiring for a year, then there is sufficient to make it a settlement, for there appears to be a service for a year, taking it that he was there as a servant: I confess, that is not clearly stated, but they have specified the livery and wages, and this looks like a service.—PAGE J. I am of the same opinion; a hiring generally is to be taken for a year, without mentioning the year particularly. —CHAPPLE J. I think this a hiring for a year; it was, if he staid a year and behaved well, the next year he would give him a full livery and wages: here the year is specified; and he lived with him 16 months afterwards: so that this seems to be a plain contract, as the event did happen, that he did live with him for a year, so the hiring is good: as to the service, it is not material that we should be informed when the first contract began or was determined, so that there clearly appears to be a service under some contract; the year shall commence from such a declaration of the master, and he served a year above that. — WRIGHT J. There is a doubt whether this is a hiring; but the question is, When it is to commence, whether from the time of the discourse, or from the end of the year? and the whole depends upon that, for there is no hiring for the first year, and so it is no service at all unless it is under some hiring, contract, or retainer: next year was the year after that in which he was to stay and behave well, so that, after the commencement of the next year, he only served six months, and so there is no service for a year under a hiring; for in *Lidney* v. *Stroude*, and *Windsor* v. *Wickham*, there were actual hirings stated. I own I have some difficulty to collect a hiring from this order, for the first year; there is no doubt but that it is a hiring upon the words, "next year he would give him a full livery and "wages;" but if there is no hiring for the first year, there is no service for the first year: and so a defect of service, it being only six months after the first year: therefore, as at present advised, I think this is not a settlement. — CHIEF JUSTICE: If one is hired from *Michaelmas* to *Christmas*, and serve that quarter, and then is hired from *Christmas* to *Christmas*, and serves three quarters of that upon the second hiring for a year, this is a good settlement, for it complies with the act, being hired for a year into a parish (*a*);

(*a*) *Post*, pl. 358.

(*b*) *Post*, pl. 359.

(*c*) Co. Lit. 47.

(*a*) See *post*, § 9.

and it was a sufficient service, as there had been a hiring for a year. The legislature had two reasons for making this a qualification for a settlement. 1st, The credit of being hired for a year. 2dly, The benefit to the parish by an actual service: and so, in this case, it is answered, if here is a hiring, and an actual service for a year: but when the service is precedent to the hiring and contract for the service, whether that should gain a settlement, I do not know. If this had been properly stated, we might have judged of it; so it is the best way to send it down again, and if it appear he lived the first year under any contract, the promising to give him a full livery and wages the next year amounts to a hiring for a year, and the service, part in one year, and part in another, will be sufficient: I shall never consent to quash this order as it now stands. — Upon which it was ordered to be sent down again to the Sessions. (*a*)

A *general hiring* shall be construed to be a hiring for a year.

289. *Rex* v. *Wincaunton*, *H. T.* 25 *G.* 3. *Burr. S. C.* 299. — *J. F.* was born in *W.*, where he lived with his parents until the age of 17; when, being informed that *S. W.*, of *C. H.*, wanted a stout boy, he went and offered to serve him. *W.*, liking him, hired him to serve in husbandry, and agreed to give him meat, drink, washing, and lodging, and clothes when wanted; but no particular time was agreed on; and the pauper apprehended his master might turn him off, or he might go away from him, at their pleasure; nevertheless, there was no agreement for that purpose. The pauper continued with and served *W.* in *C. H.* for two years and a half; and, at the end of the first three quarters of a year, wanting clothes, his master provided clothes for him; and so afterwards, when he had occasion for clothes. The pauper afterwards removed into the parish of *C.*, but having gained no settlement there, was removed, with his wife and family, to *W.* The Sessions adjudged the paupers gained no settlement by such service in *C. H.* It was argued, that a general hiring is a hiring for a year, *Br. Abr.* title *Labourer*, pl. 20., was cited; which mentions, that by the statute of *labourers*, 24 *Edw.* 3. *c.* 1. *Quilibet potens in corpore doit server;* and HANKFORD said, "that every "infant of 12 years, retained, ought to serve." And "*Si Jeo "face covenant cue un de moi server, il viendra et mon service pour "un an entier.*" So also LORD COKE says (*b*), "If a man retain "a servant generally, without expressing any time, the law shall "construe it to be of one year; for that retainer is according to "law." The act of 8 & 9 *W.* 3. *c.* 30. only requires a service: the hiring depends upon 3 & 4 *W.* & *M. c.* 11. Now here is an express service stated. So that the only question is upon the hiring. The modern cases cited were *Crowland* v. *St. John Baptist* (*c*), where it was said he served for a year, and the order was held good; for the law presumes he was hired for a year: and *Chesham* v. *Missenden* (*d*), where *S. B.* came as a hired servant, and lived with her father for a year in a little cottage at *M.*, who gave her 10*s.* a year, and what else she could get, and she was holden to be settled at *M.*: and *Rex* v. *Inhabitants of Putney*. (*e*) These were cited to prove that a general retainer is a retainer for a year. On the other side it was argued, that this was only a hiring at will; though they admitted that the old books prove that

(*b*) Co. Lit. 42. b.

(*c*) *Viner*, title "Settlement of the Poor."

(*d*) *Ante*, pl. 258.

(*e*) *Ante*, pl. 288.

(*a*) The records have been searched; but it does not appear whether this case ever came before the Court again.

a general hiring is, upon the statute of *labourers*, a hiring for a year. Yet the circumstances of the hiring may show the intention to be otherwise. And that this hiring seems, upon the circumstances of it, to be only at the will of each. The rule is not to be taken so strictly and absolutely, as that it cannot be otherwise; but only that, *primâ facie*, a general hiring is a hiring for a year. — LEE C. J. It is agreed that a general hiring is a hiring for a year, according to 1 *Inst.* 42 b. Therefore the only question is, Whether the circumstances of this case show an intention to the contrary? The apprehension of the pauper is stated indeed to have been to the contrary; but it is also stated, that there was no agreement for that purpose. His Lordship said, he did not see any circumstances to vary it from the general rule, which has been and must be agreed.—The three other Judges were of the same opinion.

A gentleman, whose *hired* servant, of the name of *Hill*, was gone away, said to the pauper, "Do you like the life of a keeper?" "Yes." "Then go into *Hill*'s place, and you shall want no encouragement." This is a *general hiring*; and a service under it for *a year* will gain a settlement.

290. *Rex* v. *Berwick St. John*, *E. T.* 33 *G.* 2. *Burr. S. C.* 502. — *B. B.* happening to meet *S. J.*, then head-keeper of *Rushmore Lodge*, (one of the lodges of *Cranborne Chase*), who resided at the Lodge, in the parish of *Berwick St. John*, and had then lately parted with one *E. H.*, who had been for many years one of his servants or under-keepers, at the wages of 3*l.* a year and a keeper's livery, besides meat, drink, and lodging. *J.* addressed the pauper in these words: "Do you like the life of a keeper?" which being answered in the affirmative, he said further, "Then go into "*Ned Hill*'s place, and you shall want no encouragement; I'll "give you a suit of clothes directly." The pauper readily consented, and, without further conversation, went immediately into the service, and continued therein for three years, residing all that time with his master at *R. L.* Upon or soon after his entering into the service, he was furnished with a keeper's livery; was, during the three years, provided with meat, drink, and lodging, and at the end thereof was paid 9*l.* for his service. — LORD MANSFIELD: This man served three years, and received three years' wages; but it is objected, that he was never hired at all. It is admitted, that if he was hired at all, it would, by law, be a hiring for a year. And, upon the dialogue stated, it is a clear hiring, for *H.* was a hired servant.

An agreement to live in the house of a father-in-law, and to work with him for 1*d.* a gross, deducting 5*s.* a week for board and lodging, is not a general hiring for a year. S. C. Bl. Rep. 443.

291. *Rex* v. *St. Peter's in Dorchester* (*a*), *M. T.* 4 *G.* 3. *Burr. S. C.* 513. — The pauper was born in the parish of *The Holy Trinity*, but his father's settlement was in *St. P.*'s. Soon after his birth his father died, and his mother married again to one *E. O.*, an inhabitant of *The Holy Trinity*, when the pauper, her son, was about six years old. The son removed with his mother to the house of his step-father, and resided there till the age of sixteen; during all which time he was employed by his step-father in his trade of a button-maker, who had the benefit of his labour, without any other compensation than maintenance, and pocket-money as the step-father thought fit. About the age of 16, the pauper insisting on a larger allowance for his labour, and the step-father refusing to allow it him, the pauper left his step-father's house, and went to *B.* After passing some time there, he returned to the parish of *The Holy Trinity*, where he and his step-father came to an agreement, by which the son was to live with the step-father in his house, and to work as before at his trade, and to be

(*a*) See Rex v. Chillesford, *ante*, pl. 266.

paid at the rate of one penny a gross for the buttons he should make, (being the same wages as the step-father paid to the other workmen he employed,) deducting at the rate of 5*s.* a week for his meat, drink, washing, and lodging. There was no other hiring or agreement between the parties. Under this agreement the pauper lived and worked with his step-father in the parish of *The Holy Trinity* four or five years, and received wages, and paid for his maintenance at the rate agreed on. — LORD MANSFIELD: This is the case of a workman hired to work by the piece. It is not like any of the cases where there was a hiring for a year. There was a case somewhat like this about burling of cloth. (*a*) Indeed hiring in general and indefinitely gives a presumption of a hiring for a year, where the nature of the service and subsequent facts concur to render it probable that it was so meant; but the nature of the present service is quite otherwise. It is very clear, in this case, that there was no hiring for a year, either express or implied.

(*a*) Rex v. Inhabitants of Wrington, *ante*, pl. 270.

292. *Rex* v. *Dedham* (*a*), *M. T.* 10 *G.* 3. *Burr. S. C.* 653. — The pauper was bred up to the trade of a plumber and glazier. In the month of *April* 1767 he let himself to *J. M.*, of *D.*, plumber and glazier, at the wages of 6*s.* a week, board, lodging, and washing, summer and winter. He served under that agreement for the space of 11 months, when his master having taken an apprentice, informed him that he must lodge out of his house. Upon which the pauper demanded sixpence a week more; alleging that he would otherwise quit the service, on account of his master's having withdrawn from the original agreement. He continued to receive the additional sum of 6*d.* a week till the *September* following: and during all the said service his master paid him his wages, in different proportions, as he wanted them. — LORD MANSFIELD: All the cases require a hiring for a year, but there must be a reciprocal obligation upon both the contracting parties. I see nothing here that can be laid hold on to make it a hiring for a year. It was a hiring at so much a week; and when the master could not lodge the servant any longer, they came to a new agreement for an additional 6*d.* a week. The servant at that time alleged, that he would quit the service unless the master would comply with his demand; and, to prevent his doing so, the master complied, and agreed to pay him 6*d.* a week more. — YATES J. There must be a hiring for a year, either in law or in express words. These words do not express it; and here is a circumstance stated which destroys the presumption of its being a general hiring for a year; namely, that the servant demanded an additional 6*d.* a week, alleging, that he would otherwise quit the service; and the master complied; so that neither of them seems at that time to have thought the contract, originally made between them, binding for a year. — ASTON J. Though a general hiring is a hiring for a year, yet there must be an obligation upon the servant to serve for a year, in order to his gaining a settlement under such a hiring. But there is nothing in the contract here stated that infers such an obligation upon this servant. The 6*s.* a week wages, summer and winter, only imports the agreement to have been, that the wages should continue always the same, and not be varied according to the seasons; it does not import that the contract was

A hiring at "6*s.* a *week*, board, lodging, and washing, *summer* and *winter*," is not a *general hiring* for *a year*: for the contract might be determined either by the master or the servant before a year expired.

(*a*) See Rex v. Warminster, *ante*, pl. 287.

to continue during the whole year. And the master's complying with the servant's demand of the additional sixpence a week upon the servant's declaring that he would otherwise quit the service, shows how the contract was then understood by both of them. The pauper's apprehension is nothing; we cannot regard it; especially as he is stated to have alleged that he would quit the service unless his master would comply with his demand. — WILLES J. concurred in opinion.

A hiring at 2s. 6d. a week, to part on a fortnight's or a month's notice, with a service under it of seven years, the servant receiving his wages sometimes at the end of a week, or a fortnight, or a month, is not such a *general hiring* as will gain a settlement. *Vide* Burr. S. C. No. 107. and the cases there cited, p. 301.

293. *Rex* v. *Bradninch*, *H. T.* 10 *G.* 3. *Burr. S. C.* 662. — The pauper came to one *S. R.*, in the parish of *C.*, and agreed to live with him by the week, at 2*s.* 6*d.* a week, and to part at a fortnight's or month's notice. The pauper being asked, "How "long he intended to live with *R.*?" replied, "he did not know, "but as long as they liked." And accordingly the pauper lived with *R.* for eight years under that agreement, the pauper and master being both at liberty to part from each other on a fortnight or month's notice. The pauper received his wages of 2*s.* 6*d.* a week, sometimes at the end of the week, sometimes at the end of a fortnight, and sometimes longer, as he wanted money. — *Heath* endeavoured to maintain, that this was a hiring by the year; every general hiring is a hiring by the year; and so the law shall construe it; for that retainer is according to law. *Co. Litt.* 42. *b.* lays this down expressly, and this is a sort of general hiring. It cannot be taken as a hiring by the week only; because they were not to part but at a fortnight's or a month's notice, which is inconsistent with the idea of a hiring only by the week. — But THE COURT, without hearing the counsel on the other side, over-ruled *Heath's* argument. — And LORD MANSFIELD observed, that this pauper was under no obligation to serve for a year; whereas, in order to gain a settlement, there must be an obligation upon the pauper to serve for a year. (*b*)

If a boy be hired as a bootcatcher and postboy, but no term for which he was to serve is mentioned; and he is found in board and lodging, but receives no wages: this is a *general hiring*.

294. *Rex* v. *Stockbridge*, *M. T.* 14 *G.* 3. *Burr. S. C.* 759. — The pauper was legally settled in *S.* He was afterwards hired to one *M. N.*, of the parish of *W.*, to serve him as a bootcatcher, and occasionally as a post-chaise driver, no term for which he was to serve being mentioned: he accordingly went into the service of *N.*, and continued in it for one year: and was, during that time, found by his master in meat, drink, and lodging there, but received no wages for such service. The only conversation that passed between him and *N.* was as follows: the pauper asked *N.*, "Whether he "wanted a bootcatcher and driver?" *N.* said, "Yes." The pauper replied, "That he was willing to serve him." And thereupon *N.* bid him go into the yard and look after the horses. No mention was made of wages, or of meat, drink, or lodging. The pauper quitted *N.*, and was afterwards sent for by one *J. W.*, an innkeeper at *B.*: He went to *W.*, and asked him, "If he "wanted a driver?" to which *W.* answered, "Yes:" and the pauper said, "he should be glad to serve him:" upon which he was ordered by *W.* to take care of his horses, and not to drive them too hard: no mention was made of meat, drink, or lodging. The pauper served *W.* as a postillion, for a year, in the parish of *B.*; being found by him in meat, drink, and lodging there, but received no wages: The pauper said that he believed that *N.* and *W.* both understood, that he was to have his meat, drink, and

(*b*) *Vide* Burr. S. C. No. 98. p. 280.; and No. 165. p. 513.; and No. 202 p. 653.

lodging, while he continued with them; and the pauper thought he was at liberty to leave either the said *N.* or *W.* whenever he pleased: it was proved by several witnesses, that the customary manner of engaging postillions is as above mentioned; and that the masters and postillions think themselves at liberty to part whenever they please. The Sessions were of opinion, that the pauper did not gain a settlement either in *W.* or *B.* — MR. JUSTICE ASTON declared himself fully satisfied that the justices were mistaken in their opinion. A general indefinite hiring is a hiring for a year, unless something appear that may raise a presumption to the contrary. In proof of this he cited the case of *Weyhill* (*a*), and that of *St. Peter's in Dorchester* (*b*); also the case of *Wincaunton.* (*c*) Now, here is enough stated to show a general indefinite hiring: which is, by law, a hiring for a year: and nothing is stated to contradict it, or to raise a presumption to the contrary. Therefore the presumption must be, that the hiring was for a year. — MR. JUSTICE WILLES and MR. JUSTICE ASHHURST expressed themselves to the same effect.

(*a*) *Ante*, pl. 271.
(*b*) *Ante*, pl. 291.
(*c*) *Ante*, pl. 289.

295. *Rex* v. *Clare, M. T.* 16 *G.* 3. 3 *Bur. S. C.* 819.—The pauper, a journeyman miller, let himself, at *Michaelmas* 1768, to *E. S.*, of *C.*, by the month, at the wages of 8*s.* a month, to be at liberty to depart from her service at a month's wages or a month's warning: at the time of his hiring, it was agreed between the pauper and *E. S.*, that if he continued in her service till harvest time, he should be at liberty during harvest month to let himself to any other person he chose for the harvest month. The pauper continued five years in the service of *E. S.*; and, during that time, constantly let himself to some person or other for the harvest, and received the common wages of 8*s.* from his said mistress for the harvest month in each year, and paid her one moiety of the wages earned at such harvest annually and during his service with her; but generally at the end of every month, and sometimes weekly, received his wages of 8*s.* a month, or in that proportion: he considered himself as a monthly servant, and at liberty to leave his mistress at the end of any month, paying a month's wages, or giving a month's warning, according to his first agreement. — The Sessions were of opinion that the pauper had thereby gained a settlement in *C.*; but in the Court of King's Bench it was objected, that this was no hiring for a year, but only a hiring for a month; and the counsel on the other side gave it up as indefensible.

A hiring at 8*s.* a month, with liberty to let himself out in harvest-time, and depart at a month's wages or a month's warning, is not a *general indefinite hiring* for *a year*, but a special hiring by the month.

296. *Rex* v. *Bath Easton, H. T.*, 16 *G.* 3. *Burr. S. C.* 823. — The pauper, a single man, was bred a barber: in the year 1748 he was settled at *B. E.*, and went from thence to *D.*, to get employment. He accordingly offered himself to one *G.*, a barber of the parish of *St. J.*, in *D.*, who engaged him into his service as a journeyman barber, and agreed to give him meat, drink, and lodging, but would not give him any wages, in lieu of which he was to have the *Christmas-boxes.* He accepted these terms, but nothing further passed at that time; and no particular or precise time was stipulated or agreed on between the master and him that he should serve: he thereupon entered into his service, and lived with *G.* in the parish of *St. J.*, for four years; during which term he was found with meat, drink, and lodging by his master in his own house, and received the *Christmas-boxes* that were given by the

A *general indefinite hiring* to serve for board and lodging, and to receive perquisites instead of wages, is a hiring for a year, though both master and servant think themselves at liberty to part when they please.

customers, and thought himself at liberty to leave his master when he thought proper. He then left *G.*, and went to *M.*, and served *B.* (who kept a public-house there), in his stable. *B.* agreed to find him meat, drink, washing, and lodging in his own house; but he was not to give him any other wages than what he might receive as perquisites of the stables, from horses that came there; but no particular or precise time was stipulated or agreed on that he should serve: he apprehended that his master might have turned him off, or he might have gone away from him, at their pleasures; but there was no agreement between them for that purpose: sixteen years elapsed from his first going to *B.* until he finally left him, but during the said time he left *B.* several times, at his pleasure; but from the time of his first going into the service, he was with *B.* two years, and upwards, without leaving him at all; and at the end of the said term of 16 years, he was with *B.* for three years together without interruption: and during the whole time he lived with *B.* he was found by him in meat, drink, washing, and lodging. — The justices removed him from *M.* to *B. E.*, and the Sessions confirmed the order; but it was admitted by the counsel in support of the order, that the *general hiring* at *M.*, and his service under it, had gained him a settlement there; and the two orders were accordingly quashed.

A general hiring at weekly wages is a hiring for a year. 8 C. Cald. 440.

297. *Rex* v. *Seaton and Beer*, *E. T.*, 24 *G.* 3. EDITOR'S *MSS.* — The pauper being settled in the parish of *S.* and *B.* went into the parish of *B.*, and made an agreement with *S. P.*, who kept a public-house there, as follows: "That *P.* should give him 1*s.* "a-week as he had given the other man or men, and the vails of "the stables." Nothing was said about the time of his service. At the end of the year his mistress said to him, "You have been "here a year, I will pay you." To which the pauper answered, "It is no matter, I may stay with you another year." She said, "Very well, *S.*" He did stay another year, and then received what was due to him, being 5*l.* 4*s.* He worked in the stables as an ostler; and neither at the time of making the first agreement, nor at the end of the first year, was any mention made, either by the mistress or the pauper, of a hiring for a year, or of the term for which he was to serve; but the pauper apprehended that his master might have parted with him at any time, on giving reasonable notice. No evidence was given of the time for which any such man or men, as above referred to, had been at any time hired by *P.* — The Sessions were of opinion, that the pauper gained no settlement in *B.*, and confirmed the order of removal to *S. and B.* — FANSHAW showed cause, and endeavoured to distinguish this from the cases of general hirings, particularly the case of *Berwick St. John* (*a*), *Rex* v. *Dedham* (*b*), *Rex* v. *Bradninch* (*c*), and *Rex* v. *Stockbridge*. (*d*) — SYLVESTER, *contrà*, said, this was the common case of a general hiring, which was equivalent to a hiring for a year, unless circumstances appeared to show a contrary intention; and that the circumstances here did not, they relied on *Rex* v. *Wincaunton*. (*e*) — WILLES J. The first agreement was general, but the pauper was to receive wages like a former servant. I think the conversation at the end of the year was an agreement to serve another year, which makes it even stronger than the case of a general hiring. The case of *Rex* v. *Stockbridge* is decisive of the present question. — ASHHURST J. I am not for narrowing the

(*a*) *Ante*, pl. 290.
(*b*) *Ante*, pl. 292.
(*c*) *Ante*, pl. 298.
(*d*) *Ante*, pl. 294.
(*e*) *Ante*, pl. 289.

determinations in favour of settlements; and this does not go so far as some other cases. The general rule is, that an indefinite hiring, without any circumstances to show that a less time was meant, shall be considered as a hiring for a year. In this case the first conversation would amount to an indefinite hiring. The second seems to show, that it was in the mind of both that it should be a hiring for a year. There are cases where it has been so held, against the apprehension of both. — BULLER J. It is settled in a variety of cases, that the apprehension of the pauper makes no difference. What the Court went upon in *Rex* v. *Dedham* (*a*) was not the apprehension of the pauper, but a conversation between him and his master explaining the original contract; that circumstance being laid aside, what *Yates* J. said in that case is decisive of this; for he considered the payment of the wages weekly as making no difference. The first agreement would be sufficient; but on the second there can be no doubt. — *Order quashed.*

(*a*) *Ante*, pl. 292.

A hiring at weekly wages for so long time as he should want a servant, is not a general hiring for a year.

298. *Rex* v. *Elstack*, *H. T.* 25 *G.* 3. EDITOR'*s MSS.* — The pauper was hired to *J.* and *I. S.* of *W.*, two brothers, who kept house and lived together. She was the only female servant in the house, and did all the menial and household business. No mention was made about being hired for a year. She hired herself to them at the wages of 1*s.* 4*d.* a week, and board and lodging, for as long a time as they should want a servant. When she had served seven weeks she was paid her wages; and afterwards, when she had served two or three months, she was paid again as she wanted them. She continued to live a year and five months in the service; and declared, she did not think herself loose, or at liberty to go away at the end of every week, nor even at the end of every month. She was removed from *W.* to *E.*, and the Sessions confirmed the order. — BEARCROFT, in support of the orders, admitted that a general hiring standing alone would be a hiring for a year; and that the single circumstance of wages payable weekly would not prevent it from being so considered; but he contended, that this was not that kind of indefinite hiring, but a contract determinable at the end of any one week, at the pleasure of the master, and no obligation on either side for a year. As to the apprehension of the pauper, that, he said, was immaterial. — LEIGH, *contrà*, said, that a hiring for so long as they should want a servant would of itself be a general hiring (*b*); that in one case (*c*) a contract, expressed to be at will, was held to be a general hiring, unless the will was determined. In short, wherever the time is not expressed to be for less than a year, it is a hiring for a year, which is the only hiring known to the law. This woman was a menial servant, which is in its nature a service for a year. In *Rex* v. *Bath-Easton* (*d*), and other cases, the Court, they said, had gone farther, and given a settlement where it was doubtful if there were any retainer at all. As to the circumstance of the wages being payable weekly, it certainly made no difference. The case of *Rex* v. *Dedham* (*e*) would have been a settlement if it had not been for the additional sixpence in the middle of the year. — LORD MANSFIELD: A general hiring without limitation of time is presumed to be a hiring for a year; but, like all other presumptions, it is to be explained by circumstances, and holds good only till the contrary appears. Wherever an intent appears

S. C. Cald. 480.

(*b*) But Mr. *Justice Buller* denied this position.

(*c*) Rex *v.* Stockbridge, *ante*, pl. 294.; but no such circumstance appears in this case.

(*d*) *Ante*, pl. 296.

(*e*) *Ante*, pl. 292.

to hire for a less time, this destroys the presumption. I think enough appears in this case to show, that a hiring for a year was not intended. For, 1st, the contract is at the will of the master, "for as long a time as he shall want a servant;" and, 2dly, there is a certain time at which only the servant can be turned off; that is, the end of a week. She could not be discharged at the end of the year if it happened in the middle of a week. — Orders confirmed.

An agreement by a daughter to live with her father, and do the offices of a servant for a year, for her board and lodging, and other perquisites, is a good *hiring for a year*, though the daughter is at liberty to earn what she can by her labour.

299. *Rex* v. *Chertsey*, *T. T.* 27 *G.* 3. 2 *T. R.* 37. — The pauper was hired for a year at the wages of 4*l.*, and served out that year with Mr. *S.*, in the parish of *C.* About three weeks before that service expired, her father, who was a day-labourer, in consequence of his wife's death, came to the pauper, and applied to her to come and live with him, to do the offices of a servant, for a year in the parish of *T.*, and offered her her board and lodging, and such profits as she could make by keeping fowls, and what she could earn by her own labour; and if that did not produce as much as she got at Mr. *S.*'s, her father was to make up the difference. She agreed to come on those terms, and came accordingly, and lived with him in pursuance of that agreement in the parish of *T.* for a year and upwards, during which time she got about 1*l.* 11*s.* 6*d.* by keeping fowls, and 2*l.* 12*s.* 6*d.* by going out charing and taking in plain work; and at the end of the year her father gave her 10*s.*, as an additional recompence for her having gone out with him to reap in the harvest month. — ASHHURST J. All that is necessary to give a settlement under these statutes is, that there should be a hiring for a year and a service for a year. As to the hiring for a year it is only necessary to read the words of the case to determine it: it states, that the pauper's father applied to her to come and live with him *to do the offices of a servant for a year* on certain terms, which she agreed to, and that she came accordingly and *lived with him in pursuance of that agreement for a year.* The objection is, that this is no hiring, because the Sessions have not stated that the pauper lived as a hired servant; but there is no occasion for the Sessions to state that expressly, if it sufficiently appear from the terms of the contract; now, in the present case, that does appear. Then it was objected, that the contract was not binding; but that is not so, she was hired to do all the offices of a servant for a year. The terms of the contract are not such as would enable the pauper absolutely to leave her father's service, but only to do particular work for her own benefit; she was first bound to perform all his work, and consistently with that she was at liberty to gain as much as she could earn by her own labour. This, therefore, was a good hiring for a year. And as to the service the case states, that the pauper lived with her father in pursuance of the agreement for a year. This is by no means like the *Pittminster* case, for there was no hiring at all for any time.— GROSE J. In order to gain a settlement by hiring and service, there must undoubtedly be a hiring for a year, and a service for a year. But in the hiring it is not necessary to use technical terms; the word "hiring" need not be stated on the case; it is sufficient if it appear that the servant agreed to serve, and the master to pay for that service for a year. Then the circumstance of the father being the master of his own

child will not vary the case. This was not a hiring generally by the father as long as he lived, but a hiring for a year expressly. The father offered the pauper certain terms, which it is stated she agreed to accept; then there was a contract between them for hiring. According to the terms of this contract she was not at liberty to desert her father's service; she was only permitted to do what other work she could consistently with her father's service; which she was first bound to perform. She did every thing which related to her father's service, and her earning besides that will not prevent its being considered as a hiring for a year. And as to the service, it is expressly stated, that the pauper lived with her father for a year *in pursuance of that agreement.* — The orders, therefore, removing her from *T.* to *C.*, were quashed.

300. *Rex* v. *Macclesfield*, *H. T.* 29 *G.* 3. 3 *T. R.* 76. — The pauper being settled in *W.*, was hired, about 15 years ago, by *Francis Beswick*, late of *M.*, button-maker, for 11 months, at 10*l.* 10*s.* wages: at the end of 11 months the master and the pauper settled his wages for 11 months, and his master gave 10*s.* 6*d.* over, saying, that he had been a good servant, and added, "*You may as well stay on an end in your place;* the place suits "you, and you suit the place." The pauper's answer was, "Very "well, Sir, I have no objection;" and the pauper continued to follow his master's business near three years. The pauper, being at *B.* with his master's cart, was taken ill, and staid there some time, which occasioned him to lose his service. His master used to give him money occasionally during his service; but the pauper kept no account himself. A few days after the pauper's return from *B.* his master settled with him; the pauper did not know in what manner, but supposed the money was right; he thought his wages would come to about 4*s.* a week. — LORD KENYON C. J. It is clear, that there must either be an express or an implied contract for a year, in order to give the servant a settlement. An express hiring for 11 months will not confer a settlement, unless the Sessions find that it was fraudulent, and that a year's service was intended though only 11 months were expressed; as in a case (*a*) which I remember, where there was a hiring for 11 months with an agreement to give in another month's service. Now, in this case, the first hiring for 11 months was not sufficient to confer a settlement; but when that time was elapsed, the master told the pauper, that he might *as well stay on an end;* which in that part of the country means an indefinite time. This second hiring, therefore, must be considered as a general hiring, which the law construes to be a hiring for a year. As to this expression referring to the time for which the pauper was originally hired, it is too refined; it only referred to the nature of the service in which he was before engaged. Then if we consider the wages for which the pauper served under a second agreement, it negatives the idea that the parties contracted for another 11 months for the same definite sum which the pauper received under the first agreement; for it is stated, that he received about 4*s.* a week, which does not amount to the same apportionment of wages. — ASHHURST and GROSE Js. concurred; and the order removing the pauper from *M.* to *W.* was quashed.

If a servant be hired for eleven months for 10l. 10s., and at the expiration of that time the master tells him that he may stay on an end, without mentioning the wages, and the servant assents, this second agreement is a general hiring.

(*a*) Rex *v.* Milwich, *post*, pl. 306.

A hiring to serve at 3s. 9d. a week, with a liberty of parting on a month's notice, is *a general hiring*.

S. P. Rex v. Birdbrooke, *post*, pl. 320.

301. *Rex* v. *Hampreston* (*a*), *E. T.* 33 *G.* 3. 5 *T. R.* 205.—*W. Gray*, went to one *S. Hannam*, a miller, of *G.*, and agreed to serve him for 3*s.* 9*d.* a week; he considered himself obliged to serve his master on *Sundays* as well as other days; and according served on *Sundays*. "They had a liberty of parting on a month "notice on either side." He received 1*s.* as earnest to bind the bargain. There was no mention of time, or for how long he should serve. He continued under this contract about two years and a half, residing in *G.*, in the house of his master. He then went to *Tisbury* to be inoculated, where he remained two months *S. Hannam* then sent for him, and he was hired again by him at the rate of 4*s.* a week, the pauper insisting that the wages should be even money. He continued to live with *H.* under the last contract for two years and a half; during all which time he resided in his master's house in *G.* — LORD KENYON C. J. It admitted that, since the case of *Rex* v. *New Windsor* (*b*), the circumstance of the parties having it in their power to determine the service on giving notice will not defeat the settlement, where there is a contract for a year, and a year's service under it. Neither could it be disputed by the counsel, who argued in support of the order of Sessions, that a general hiring is not a hiring for a year. In each of the cases cited there was something to show that the parties did not intend that it should be a general hiring; or was as long as the master wanted a servant, another as long as the parties liked, where, without any notice, the contract might immediately have been determined. But wherever the relation of master or servant is to continue for an indefinite time, and cannot be put an end to at the election of either party without notice, there the hiring must be understood to be a hiring for a year. If this were not a general hiring, those who dispute that proposition should have pointed out for what time it was to continue; and indeed it has been contended to be for a month, or a month added to a week; but there is no foundation for either. For if that were so, the pauper might have left the service at the end of the first month, or of the five weeks, without giving any notice at all: but there is no pretence for that; for by the terms of the contract he was to give a month's notice before he could determine it. And this is distinguishable from *Rex* v. *Brodninch* (*c*) for there was a hiring for a stipulated time less than a year. In this case, independently of the first contract, the parties met again, after an absence, and the pauper was a second time hired at the rate of 4*s.* *per* week, the pauper insisting upon an increase of wages. This also was a general hiring, which in law is a hiring for a year; and the pauper having served more than a year under it in *G.* acquired a settlement here. — ASHHURST J. It is observable that here were two hirings, entirely distinct from each other. The first was a general hiring at so much *per* week, which the law takes to be a hiring for a year. And it has been determined that the other part of the agreement, that each party had the liberty of putting an end to the contract on giving a month's notice, will not prevent the servant's gaining a settlement. On the second hiring an observation arises from the difference of expression; for there the pauper was hired *at the rate of* 4*s.* *per week*; which words clearly refer to the *quantum* of the wages, and not to the duration of the contract. This is a stronger case than the

(*b*) *Post*, pl. 359.

(*c*) *Ante*, pl. 293.

(*a*) See Rex v. Great Yarmouth, *post*, pl. 303.

of *Rex* v. *Birdbrooke*. (*a*) — BULLER J. A hiring at so much *per* week simply, and without any other expression, has been held to be only a hiring for a week, because that expression, if it be not explained by other words, has been taken to apply to the duration of the contract, and not to the wages; but here are other words to show that the reservation of weekly wages could not confine it to be a weekly hiring, for neither party could determine the contract without giving a month's notice. This is either a definite or an indefinite hiring; if the latter, the law says it is a hiring for a year. Then it was incumbent on the counsel, who contended that it was a definite contract, to define its duration; but nothing has been stated to show that it was a definite hiring. It could not be merely a hiring for a week, because the contract was only to be determined by giving a month's notice: not for a month only, as one of the counsel admitted. It must then be taken to be a general hiring; and the condition of being at liberty to part on a month's notice will not defeat the settlement; as was held in *Rex* v. *New Windsor* (*b*), and *Rex* v. *Birdbrooke*. What was said by *Lord Kenyon* in the latter of those cases has been misapplied; his Lordship had disposed of the former part of the case, namely, that there was a hiring for a year, and then he added, "the power "of giving notice makes no difference, for it has been held that an "agreement to leave the service on giving a month's warning did "not defeat the settlement." — GROSE J. of the same opinion.

(*a*) *Post*, pl. 320.

(*b*) *Post*, pl. 359.

302. *Rex* v. *Worfield*, *H. T.* 34 *G.* 3. 5 *T. R.* 506. — The pauper, who was born in the parish of *W.*, where her father was legally settled, went about six years ago to live with *Smith*, in *St. L.*, and served him near a year, but was not hired to him as she knows of. While she lived with *Smith*, *J. J.*, of *St. L.*, met her, and taking her into his house, asked her if she was hired again to *Smith*? to which she answered she was not: *J.* then asked her, if she would come and live with him, and take care of his child? to which she consented; and soon afterwards she went to him. Two or three days after she had been with *J.*, he told her he would find her in meat, drink, and clothes, and then asked if she should be satisfied with that; she told him she should. He said he would have given her money, but that it was better for her to have clothes, as she was connected with bad friends, who would take her money. She went to *J.*'s at *Christmas*, and lived with him about two years and a half, leaving him in the month of *May*, when her mistress told her that her child was then old enough not to require any further attendance, and dismissed her. The pauper said, in her opinion and apprehension she was at liberty to have left *J.*'s at any time. — LORD KENYON C. J. It has been so long settled that a general hiring is a hiring for a year, that it ought not now to be controverted. In my opinion the hiring in this case was a hiring for a year; the circumstance of the pauper's going away in the middle of a year does not show that this hiring was not of such a description; for it was competent to both parties to put an end to the contract whenever they pleased; and here they did dissolve it in the middle of a year. It is much to be wished that in cases of this kind the justices at the Sessions would draw the conclusion, and state it as a fact whether or not there was a hiring for a year. — ASHHURST J. The circumstances of this case show that the parties intended that this should be a

If a person meeting a servant in a place, ask her whether her master had hired her again, and upon her replying in the negative, desires her to come and live with him, and take care of his child, this is *a general hiring*.

hiring for a year. The pauper was to be provided with clothes in lieu of wages; now, if she had been clothed by the master the day after she went into the service, could it have been the intention of the parties that she might have left the service immediately? If not the next day, what other line can be drawn? This shows that both parties meant that the service should be permanent, and that it should not be in the power of the pauper to leave the service when she pleased. This, then, was a general hiring, which the law construes to be a hiring for a year. — BULLER and GROSE Js. assenting.

A hiring at weekly wages, either party to be at liberty to part at a month's notice, was holden to be a yearly hiring: although the case stated that the pauper let himself by the week, it being also stated that at the time pauper let himself by the week nothing passed between him and his master as to his being hired by the week, except that he was to have weekly wages.

303. *Rex* v. *Great Yarmouth*, *E. T.* 56 *G.* 3. 5 *M. & S.* 114. — Removal from *B.* to *G. Y.* — Order confirmed, subject, &c. — The pauper hired himself to one *W.* at *G. Y.* He let himself by the week, and was to have *5s. per* week wages, and either party was to be at liberty to part with the other, by giving *a month's notice.* The pauper stated he let himself by the week, and was to have *5s. per* week, but at the same time stated, that nothing passed between his master and himself as to his being hired by the week, except that he was to have *5s. per* week wages. The pauper served under this hiring, four years and three quarters uninterruptedly, and then quitted the service upon receiving a month's notice. He received his wages sometimes at the end of a week, sometimes at the end of a fortnight, three weeks, or a month, as he wanted them. He entered *W.*'s service in the summer, and left him about *Michaelmas.* — LORD ELLENBOROUGH C. J. I do not think any very material argument arises from its being first found by the Sessions, that the pauper let himself for a week; because that is explained by the statement which follows. All the facts are to be taken together into consideration without reference to the precise order in which they are found; and the Sessions have come to this conclusion upon them, that the hiring was an indefinite hiring. The first fact stated is, that the pauper let himself by the week; but in order to discover whether that was intended as the measure of time for which the service was to endure, we must look to the context, and see how the contract was determinable. We find, then, that either party was to be at liberty to determine it by giving a month's notice. Can any one say that this is a weekly hiring, when the parties were not at liberty to part without a month's notice? I cannot say so. What then is the effect of a month's notice? It does not follow from thence that it was a monthly hiring; or for any definite number of days. Wherefore, as there is no limited period of duration to be assigned for the service, the law in such case implies that it is for a year. This mode of considering the case is somewhat strengthened, if we advert to that which the Sessions have added; namely, that the pauper stated that nothing passed between him and his master as to being hired by the week, except that he was to have weekly wages. It is, therefore, in common sense and fair intendment, a hiring, of which no certain portion of time can be predicated for its duration, and is, consequently, a general hiring, which the law says is a hiring for a year. — BAILEY J. I am of the same opinion. The Court do not interfere with facts found by the Sessions, but we take it for granted that the Sessions could not mean to find as a fact, that there was a distinct weekly hiring, and upon that to submit the question to us, Whether the pauper

gained a settlement by service under it? It would be to impute ignorance to the Sessions to suppose that they meant to put any such question; and, therefore, we apprehend they meant to submit, whether there was a hiring for a year. The Sessions state, that the pauper let himself by the week, and if this were all, it would import that there was not any obligation either on the master or servant beyond a week; but the case does not stop here, but goes on to state, that either party was to be at liberty to part at a month's notice. Now, if there was to be a month's notice before the one could quit or the other dismiss from the service, how is this consistent with a weekly hiring? This point was discussed, and, as I thought, was settled in *Rex* v. *Hampreston* (a), that the requiring a month's notice is inconsistent with a weekly hiring. It has been urged, that we ought to reject the latter part of the case, because it is evidence only; but I do not agree to that, because it seems to me that the Sessions have purposely stated it, in order to ask our opinion whether the right conclusion be, that the pauper let himself by the week. And if we look at the evidence, it puts the case out of doubt, for although the pauper stated, that he let himself by the week, yet he added that nothing passed between him and his master, as to his being hired by the week, except that he was to have weekly wages. Now, if that were so, and a month's notice were required, this was not a weekly hiring; and if not a weekly hiring, then there was no definite period assigned for its duration, and it became a general hiring; and this the law has defined to be a hiring for a year. I consider this then as a hiring at weekly wages to be determined by a monthly notice, which, according to *Rex* v. *Hampreston*, is a hiring for a year. — ABBOTT J. This case is certainly not drawn up with the usual perspicuity of a case stated by the Sessions, because it states evidence of the fact, instead of the fact itself, which ought to be found. If upon a case stating evidence only, this Court should think the conclusion which the Sessions had drawn from it a wrong conclusiion, they would probably deem it better to send back the case for revision; but where, as in the present case, the conclusion appears to be right, it would be useless to send it down again. Now, if we take the case upon the pauper's evidence, it seems to me that he agreed to serve for 5*s*. a week, and that they should be at liberty to part at a month's notice; which, according to *Rex* v. *Hampreston*, and the reason of the thing, amounts to a general hiring. It is plain, that the period of service was not fixed by the hiring, the contract was not confined to a week, for there was to be a month's notice; neither was it for a month, for there were weekly wages; the hiring, therefore, was indefinite, and it is now too late to deny that this is a yearly hiring. For these reasons, I think the conclusion of the Sessions was right. — HOLROYD J. I am also of the same opinion, that the Sessions came to the proper conclusion. This, as it appears to me, was a general hiring, determinable at any period by a month's notice, which in law is a yearly hiring. It was not a weekly hiring because of the month's notice, nor a hiring for a month, for then it would have been determinable only at the completion of each month's service, whereas this might have been determined at the expiration of a month's notice, without regard to whether it expired at the

(a) *Ante*, pl. 301.

month's end or not. I think, therefore, that the finding of the Sessions was right. — Order of Sessions confirmed.

A clerk in a mercantile house, hired by the year, but serving only during the usual hours of business, thereby gains a settlement, although those hours did not, by the custom of the trade, ever occupy the whole day, and he went where he pleased, without asking his master's leave when those hours were over.

304. *Rex* v. *All Saints, Worcester, H. T.* 58 *G.* 3. 1 *B. & A.* 322. — Removal from *A. S.*, in *W.*, to *S.* — Order quashed, subject, &c. — The pauper, in the year 1812, was engaged by *B.* and Co. for a year, at the yearly salary of 80*l.* as one of their house clerks. He went into the service, and continued in it upon the same terms for two years and a half, during the last eight months of which he slept in the appellant parish of *S.* He did not sleep in the house of *B.* and Co. during any part of the service, but came to their counting-house at the usual mercantile hour, (that is to say) about nine o'clock in the morning, and staid there till five or six in the evening, with the exception of half an hour or an hour in the course of the day, when he went away for the purpose of getting his dinner; the hour of which varied to accommodate the other clerks, of whom there were 30 or 40. When the business of the counting-house closed in the evening at the usual mercantile hour, the pauper went where he pleased, without asking any leave of *B.* and Co., and he also went where, and did what he pleased, on *Sundays*. The Court of Quarter Sessions was of opinion, that under the circumstances, and from the nature of the pauper's employment, he was not so under the controul of *B.* and Co. as to be considered to have gained a settlement in *S.* as a yearly servant. — LORD ELLENBOROUGH C. J. There is in every contract of hiring some implied exception of hours for relaxation, food, and rest; I cannot at least suggest to myself any contract in which such exceptions do not exist. The master here has a right to the service of the pauper at all times, but he does not require his service at any other hours than those mentioned; there is not any exception in the contract. The hiring, then, being general, and there being no exception but such as are necessarily implied in every contract, I think that the pauper by serving under it for a year, gained a settlement in the parish of *S.* — BAYLEY J. The distinction between the two classes of cases relative to this subject is, that in the one the exception to the service is expressed in the contract, and in the other it is left by the custom of the particular trade to be raised by implication. This case seems to me to range itself under the latter class, and therefore I think the pauper gained a settlement by this hiring and service. — ABBOTT and HOLROYD Js. concurred. — Order of Sessions quashed.

V. *Of particular or special Hirings.*

A hiring for a year, to be paid according to the work done, is a good hiring.

305. *Rex* v. *King's Norton, T. T.* 13 & 14 *G.* 2. *Burr. S. C.* 152. — *M. C.* was hired with *J. E.*, of *C.*, for a year, to spin wick-yarn, at the rate of 1*s.* 6*d.* a stone. She was to provide herself with meat, drink, washing, and lodging where she pleased. She spun for him the whole year; and lodged in her master's house, and boarded with him at *C.*, and received 1*s.* 6*d.* a stone for her work, allowing her master 2*s.* a week for her lodging and board. The question was, Whether this hiring and service was sufficient to gain her a settlement in *C.*? — LEE C. J. thought it plainly a good settlement in *C.*; for here is a hiring for a year, and a continuing in the same service for a year, which are, undoubtedly,

sufficient to gain a settlement; and the rest of the Court concurred in that opinion.

306. *Rex* v. *Milwich*, *T. T.* 30 & 31 *G.* 2. *Burr. S. C.* 433.— *T.*, the pauper, was hired by *B.* of *M.*, for 11 months, for 4*l.* 10*s.*: and it was agreed between them, that he should give *B.* a month's service in, beyond the 11 months. He served *B.* the 11 months in *M.*, and also all the given-in month except the last three days; and as to those three days, *T.* could not say whether he served them or went away without serving them; but he received the whole 4*l.* 10*s.* wages.— THE COURT were extremely clear that this agreement, taken altogether, was a manifest contract to serve for a year, notwithstanding the form of expression, which they considered as an attempt to prevent the man's gaining a settlement, by a very paltry evasion. The real question is no more than, Whether 11 months and one month make 12 months? There are no particular technical words necessary to make a hiring for a year. The substance of this agreement is, to serve 12 months for 4*l.* 10*s.* And what signifies the variation of expression? Every contract to serve is a contract to serve for a year (*a*), unless there be something to explain it otherwise. Now, certainly, here is nothing to explain it otherwise.— And FOSTER J. observed, that this was an entire single contract, and not like to the cases of different contracts at different times; and he added, that no action would have lain for the wages till the end of the whole 12 months. Secondly, That as to the servant's going away three days before the end of the year, the state of the fact does not support the objection; for it does not appear that he *did* go away before the end of the year; it is only stated, that he could not say whether he served those three days, or went away without serving them. But it is positively stated that he received the whole 4*l.* 10*s.* wages; which, at least, seems to imply the master's consent or permission. Whereas in the case of *Rex* v. *Islip* (*b*), it was holden, that the servant's going away three days before the end of his year, directly in opposition to his master's will and express prohibition, upon a reasonable occasion, and upon a reasonable request (unreasonably refused), did not vitiate the settlement.

A hiring for 11 months, at so much a year, the servant to give in a month's service beyond the 11 months, is a hiring for a year.

(*a*) Co. Lit. 42. b.

(*b*) *Post*, pl. 425.

307. *Rex* v. *Bishop's-Hatfield*, *H. T.* 31 *G.* 2. *Burr. S. C.* 439. —*A.* was hired to one *P.*, a parishioner of *S.*, at 5*l.* for one year, to wit, from *Michaelmas* 1752 to *Michaelmas* 1753, with liberty to let himself for the harvest-month to any other person. He served *P.* until the harvest-month, and a little before the said harvest-month, without the knowledge of *P.*, hired himself for the said harvest-month to one *T.*, of the same parish; but went, with the knowledge of *P.*, and worked with *T.* for the said harvest-month, and received wages for the said harvest-month. During the month *A.* brewed for *P.*; served him for the remainder of the year; lodged in his house in *S.* during the whole year, and at the end of the same received the 5*l.* for his year's wages.— LORD MANSFIELD: It is, in effect, only a hiring for 11 months. The harvest-month is the principal month of the year. It is safest to keep to the statute. If we allow this we shall not know where to stop.— DENNISON J. concurred: and he observed, that though the construction had been, in many respects, favourable as to the service, yet they had been stricter as to the hiring; and if this was allowed to be a good hiring, it would tend to enervate the act, and set the construction quite loose.— FOSTER J. agreed, in both, with DENNISON J., and

A hiring from *Michaelmas* to *Michaelmas*, at 5*l.* wages, with liberty to let himself out during the harvest month, is only a hiring for *eleven months*, although the servant lodge the whole year in his master's house.

Cald. 80. 95.

See Rex *v.* Westerleigh, *post*, pl. 312.

he mentioned some instances of the former, and particularly the case of *Westwoodhay*. (*a*) But this is only a hiring for 11 months.—WILMOT J. concurred. It does not turn upon the obligation the master was under; but upon the obligation the servant was under: and the servant was not obliged to serve the whole year. It is very clear that this is not a hiring within the act. (*b*)

(*a*) *Post*, pl. 353.

A hiring for the term of three years, at 6*d.* a week for the first year, 9*d.* a week for the second, and 18*d.* a week for the third, to work only 11 hours a day, and to have the rest and *Sundays* at his own disposal, is a mere contract from week to week, and not a hiring for a year.—Cald. 369.

308. *Rex* v. *Macclesfield*, *E. T.* 31 *G.* 2. *Burr. S. C.* 458.—The pauper was a bastard child, born in *S.*, and maintained by the overseers of *S.* When he was about the age of eight years, he was, without the knowledge or consent of the overseers of *S.*, hired to one *Swain*, of *M.*, to work in his silk-mill there, for the term of three years, at 6*d.* a week for the first year, 9*d.* a week for the second year, and 18*d.* a week for the third year. And the contract was made (as well with the consent and direction of the mother of the pauper as with his own free will) by a person whom the mother employed for that purpose, she not being able to stir about herself, or to do any thing towards maintaining the pauper. The master, *Swain*, was not to find the pauper either diet or lodging; and the service was to be only 11 hours in the six working days; and all the rest of the time, as well as on *Sundays*, the pauper was at his own liberty, and his own master. The pauper continued three years in the service; but within that time frequently absented himself from his work, sometimes for a whole day or longer, and at other times for several hours in the day. For all those defaults deductions were made out of his wages in proportion to the time lost; but there was never any new or other agreement made save as aforesaid. During the whole three years the pauper lodged with his mother in *M.*, who received his wages, and the same not being sufficient to maintain him, and the mother being unable to work, the overseers of *S.* contributed 6*d.* a week during the whole time, towards his maintenance. About, or soon after the expiration of the three years, the mother died, and the pauper, being ill, required relief from the overseers of the poor of *M.*, who, thereupon, applied for the order to remove him from their township of *M.* to that of *S.*—THE COURT held clearly that the settlement was in *S.*—LORD MANSFIELD premised that there was no foundation, on this state of the case, to imagine that it could be a settlement upon the ground of an apprenticeship: the only question is, Whether these facts stated amount to a settlement in *M.*, as a hiring for a year and service for a year? The pauper was an infant of only eight years of age at the time of the hiring, therefore he was not bound by the agreement. Indeed, he might have affirmed it (for the contract of an infant is not absolutely void, but only voidable at his own election) (*c*): but the master could not oblige him to stand to it. Then, as to the contract itself—it was only to serve 11 hours in the day of the six working days; but during all the rest of those days, and the whole *Sunday*, the servant was to be at his own liberty and his own master. It is in the nature of a contract from week to week; and it cannot, in this case, be construed to gain a settlement, unless it had been intended that it

(c) This doctrine was settled and established in the case of Holt v. Ward, B. R. Mich. 1732. 6 G. 2. 2 Str. 937.

(*b*) A person was hired as a shepherd from *Harborough-fair* to *Harborough-fair* following, being a year, subject to a liberty of absence 11 days in sheep-shearing time, and to have the benefit of what he got during that time. The Court were unanimous that service under this hiring did not gain a settlement. Rex v. Empingham, *post*, pl. 313.

should: whereas it is plain that the parish of *S.* have not understood it in that light, as a contract to change the child's settlement; because they have contributed towards its maintenance during the whole 31 years. Upon the whole, therefore, this pauper's settlement is clearly in *S.*—FOSTER J. concurred. He said, he could not distinguish this case from that of *Chew Stoke.* (*a*) A service sufficient to gain a settlement must be such a state during the whole time: whereas this was not a servitude during all the time, for he was to be at his own liberty, and his own master, during the greatest part of every day, and every whole *Sunday*. Consequently, this person was not at all in a state of servitude at those excepted times: and, therefore, this is not such a service as is intended by the act.—WILMOT J. also concurred. The servant's lodging in his mother's house would have made no difference, he said, provided the hiring and service had been in all other respects good. But here the infant was not bound. For an infant has power either to avoid or to confirm his contract; and so it was determined in the case of *Holt* v. *Ward.* (*b*) Then, as to the contract itself—this is not such a hiring and service as will gain a settlement within the act of 3 & 4 *W. & M. c.*11. *s.*7.; for that act intends only such services, where the servant is under the command and control of the master during the whole year; which this servant was not to be; but seems only to have been hired for the particular purpose of working in these silk-mills at certain hours. He was not in a continued and abiding state of servitude during the whole year; and, therefore, he did not gain a settlement in the borough and township of *M.* (*c*)

(*a*) M. 1748, 22 G. 2., cited before, by Mr. YATES, by the name of Rex v. the Inhabitants of Wrinton, *alias* Wrington, *ante*, pl. 270.

(*b*) 2 Str. 937.

309. *Rex* v. *Hitcham*, *H. T.* 33 *G.* 2. *Burr. S.C.* 489.—*T. D.* let himself for one year to *W. D.*, his brother, who was a legal inhabitant of *H.*, and exercised the trade of a carpenter in the parish. He entered into the service at *H.*, and continued therein for a year, according to his contract. He was, by his agreement, to receive no money by way of wages; but his brother was to teach him as much as he could, during the year, of the trade of a carpenter, and to provide him meat, drink, washing, and lodging, during the time, and the pauper was to do all his brother's business in his farming way (*W.* occupying a small farm at *H*). He was employed by his brother in his business of a carpenter, and in his farming way, and in doing any other work that his brother ordered him, and particularly in the harvest time, *W. D.* having taken some corn to cut, of a neighbouring farm, ordered the pauper to cut it, which he did, and his master took the money for cutting it. —THE COURT of King's Bench were of opinion, that *T. D.*, by his hiring and service, gained a settlement in *H.*

If a servant hire himself to learn a trade, although by express agreement he is to have no money by way of wages, yet if there be a hiring for this purpose for a year, a service under it will gain a settlement. Cald. 369.

310. *Rex* v. *St. Agnes*, *T. T.* 10 *G.* 3. *Burr. S. C.* 671.—*W. N.*, then only two years old, went with his father, who was at that time settled at *R.*, into the parish of *St. A.*, and when he was about 15 or 16 years of age, the father contracted with one *N.*, who then lived in the adjoining parish of *P.*, for his son to work at *N.*'s stamps, in the parish of *St. A.* for one year, at the yearly wages of 5*l*. The stamps are mills, in which several labourers, men and boys, are employed in the cleansing and manufacturing

A hiring to serve a year in working at the stamps in *Cornwall*, although the servant claims and exercises the privilege according to the

(*c*) *Vide* Burr. S. C. No. 98. 209. 218. And note the diversity in those cases, which turns upon the exceptions being or not being part of the original contract.

custom of tinners, of having every *Sunday* and *holiday* throughout the year to himself, is a good hiring for a year; for in this case the exception of the *Sundays* and *holidays* forms no part of the original contract.

of tin. In pursuance of this contract, *W. N.* served *N.* in the stamps for a year, by working therein daily, *except holidays and Sundays*, according to the custom of tinners. His father received his wages as he had occasion for it; but, during the said year, *W. N.* the son eat, drank, and lodged with his father at his house in *St. A.*; serving the said *N.* at his stamps, and in no other capacity, nor ever becoming a part of his family. At the expiration of the first year, a like bargain was made for another year at 7*l.*, and a like service under it: and so on for another year. During these two last years also *W. N.* continued to serve *N.* in his stamps, and in no other capacity; and eat, drank, and lodged with his father, without even becoming any part of his master's family, and having, during the whole three years, the *holidays* and *Sundays* at his own command, as is usual for persons hired in such employ.—THE WHOLE COURT were unanimously of opinion, that *W. N.* had gained a settlement in *St. A.*: they held this to be an entire contract for a year, and the service was according to the custom of the country. They made the distinction between the *exception* being part of the original contract and its not being so, and said, that the question turned entirely on this distinction. In the case of *Rex* v. *Macclesfield* (*a*), it was part of the original contract; here it is not so.

(*a*) *Ante*, pl. 308.

A hiring for five years to serve as a shearman, with an exception to work only shearman's hours, which are uncertain, and to be at his own liberty at all other times, is not a hiring for a year.

Cald. 369.

311. *Rex* v. *Buckland-Denham* (*b*), *H. T.* 12 *G.* 3. *Burr. S. C.* 694. —The pauper lived with his father in *M.* (where he was legally settled) until he was about 17 years of age, when his father hired him to one *A.*, a clothier, of *B. D.* An agreement was made in writing, and left with the master, the contents of which were, that *A.* should teach the pauper the business of a shearman; and that the pauper should serve the said *A.* as a shearman for five years; for which he was to have, for the first year, the weekly wages of 3*s.*; to be advanced sixpence weekly wages every succeeding half year; and to find himself in meat, drink, washing, and lodging. The pauper was to work shearman's hours; but was to be at his own liberty at all other times. The pauper served his master as a shearman during the time aforesaid, according to the said agreement, working the same hours as his master's other shearmen did, and did not afterwards acquire any other settlement.—LORD MANSFIELD: This is not a good hiring, because there is an exception in it, that the pauper was to work shearman's hours only, and to be at his own liberty at all other times. But, if the contract be an absolute contract for a year, the not working on *Sundays* or *holidays*, if it be the custom of the country not to work on those days, ought not to hinder the gaining of a settlement; because, otherwise, no such servant could gain a settlement in those countries where such a custom is established.—ASTON J. spoke to the same effect. He thought this case not to be distinguishable from the cases of *Wrington* v. *Chewstoke* (*c*), and *Macclesfield* v. *Sutton* (*d*); and he repeated what *Dennison* J. and *Foster* J. said in the former case, and particularly, that a hired servant is, even on *Sundays*, to be under the government and control of his master. The distinction taken in the case of *St. Agnes* was very nice, he said, but very right. (*e*) When a person is hired, and it is part of the contract that he should be at his own liberty for part of the time, it is rather a hiring within the statute of Queen *Eliz.* than within that of King *William*. And in the case now before us the wages

(*c*) *Ante*, pl. 270.
(*d*) *Ante*, pl. 308.
(*e*) *Ante*, pl. 310.

(*b*) See Rex *v.* Turvey, *post*, pl. 334.

are weekly, which, though it does not strictly make a difference, yet it strengthens the case. There is no inconvenience in keeping to the distinction that has been laid down. A great burthen might otherwise be brought upon parishes, by manufacturers hiring great numbers of workmen to work only at limited hours, and have the rest of their time at their own disposal.

312. *Rex* v. *Westerleigh* (*a*), *M. T.* 14 *G.* 3. *Burr. S. C.* 753.— *A.* was hired for a year to *T.* of *O. S.*; but at the time of his being so hired, he told her that he was in the militia, and he might be absent a month in the year to attend in that duty; and, at the same time, told her, that he would pay a man to serve in his place, or else would make her an allowance out of his wages for the time he was absent. He entered on his service, and served her till the month of *May* following, and then joined and attended the militia for 30 days, and afterwards returned to the service of *T.*, and continued therein until the end of the year, and then made her an abatement of 8*s.* out of his wages for the time he was absent.— ASTON J. said, this was a particular case; but he thought it reconcilable to the cases of *Rex* v. *Beccles* (*b*), and *Rex* v. *Goodnestone* (*c*), and distinguishable from that of *Bishop's Hatfield.* (*d*) In the *Beccles* case the hiring was for a whole year, and the contract was not dissolved; for the absence was with the consent of the master, and dispensed with too, by his receiving his servant again. In the case of *Goodnestone* the hiring was likewise for a year; the master consented to the absence; the servant hired a substitute and paid him; there was no dissolution of the contract. Absence for a particular time with the master's leave, not agreed for at the time of the hiring, doth not vitiate the contract. But in the case of *Bishop's Hatfield*, the original hiring was with liberty to let himself, for the harvest month, to any other person. That made a clear chasm in the original contract; it was plainly a hiring for less than a year. In the present case, the man is hired for a year, to serve for a year; but mentions an event that might happen, of his being called out to attend his militia duty; and told his mistress, that if it should so happen, he would either pay a man to serve in his place, or make an allowance out of his wages. This is not a chasm in the contract, but a dispensation with the personal service.— WILLES J. premised, that settlements are to be favoured, and that militia-men ought not to have any additional hardships put upon them, if it can be avoided. However, he could not help thinking, that the case of *Bishop's Hatfield* was very like the present case; and that the absence was as much part of the contract in the one as in the other. If the mistress did not expressly agree to it, she, at least, acquiesced. Indeed, in the present case, the servant agreed, either to find a substitute, or to abate out of his wages. Now this was at the election of the mistress; and she dispensed with his absence upon an abatement out of his wages. Upon this distinction, and this only, I would, for the advantage of settlements, distinguish this case from that of *Bishop's Hatfield.* — ASHHURST J. said, that in a case which might affect a vast number of militia-men, he was for leaning in favour of their gaining settlements: and he thought this case to be distinguishable from that of *Bishop's Hatfield.* That case was certainly no more than a hiring for eleven months; but here was an alternative; and

A hiring to serve for a year, although accompanied with an agreement to be absent for a month on the duty of a militia-man, and to find a person to serve instead of him, or to make a deduction for the time from his wages, in case he was called out, is a hiring for a year.

(*b*) *Post*, pl. 415.

(*c*) *Post*, pl. 431.

(*d*) *Ante*, pl. 307.

(*a*) See Rex v. Norton, *ante*, pl. 264.

it might happen that the servant should not be called out. Therefore, he concurred in supporting the settlement; and the orders for removing *A.* from *O. S.* to *W.* were quashed.

A hiring from *Harborough Fair* to the *Harborough Fair* next following, being *one year*, at so much wages, with liberty of being absent 11 or 12 days, during the sheep-shearing season, is not sufficient to gain a settlement.

313. *Rex* v. *Empingham*, *M. T.* 15 *G.* 3. *Burr. S. C.* 791.—The pauper was a shepherd, and some short time before *Harborough Fair* 1736, hired to *Hubbard* of *Fleckney*, from that *Harborough Fair* to the *Harborough Fair* following, being one year, at the wages of 3*l.*; subject to a liberty of being absent 11 or 12 days in the sheep-shearing season, and to have the benefit of what he got during that time. He entered upon his service at *Harborough Fair* 1736, and served *Hubbard* at *Fleckney* for above three quarters of the year. He went to shear sheep in the season (which was during that space of time), for about 11 days; and served the said *Hubbard* at *E.* the remainder of the year. He received to his own use what was paid him for the sheep-shearing, over and besides his said wages of 3*l.* One day in the season he asked his master to go a sheep-shearing. His master said, "he was "going out, and could not spare him that day;" and, in consequence of that, he did not go. The pauper, during the shearing season, returned frequently to his master's house, and did what work was to be done, and his master found him his board as often as he returned home. This was not an unusual manner of hiring shepherds in that part of the country. — THE COURT were unanimously of opinion, that this was an exception out of the contract at the time of making it. They held it to be part of the contract: it is not to be considered upon the foot of leave of absence given by the master; who, being bound by the contract, could not refuse agreeing to it. The militia-man's, they said, was a particular case; it was no more than the law would have implied; and it was holden to be distinguishable from that of *Bishop's Hatfield* (*a*): and the order removing the pauper from *Fleckney* to *E.* was quashed.

(*a*) *Ante*, pl. 307.

A hiring for the year to work by the piece, with an implied liberty, from the usage of the place, to be absent when the servant pleases, but not to work for any other master, gains a settlement, though he may have absented himself at different times in the course of the year.

314. *Rex* v. *Birmingham*, (*b*) *H. T.* 20 *G.* 3. *Dougl.* 333.—*T. Baker* was hired in the parish of *Birmingham* by *J.*, a wood-screw maker, resident in that parish, for a year, *good earn good hire*, to work for him, and no other master, to make screws, at so much a gross; and this was all that passed upon the hiring. Persons are often hired at *B.* under the term "*good earn good hire*," the meaning of which is, that their pay is to depend upon their work. *Baker* had no wages. He was to have what he got; if he got nothing, he was to have nothing. His master had no business but that of a screw-maker. He was to work in his master's shop, and do no other work. He served a year under the hiring, and, during the year, sometimes lodged with his master, sometimes in another house in the parish; and when he lodged with his master he paid him for his diet and lodging. He sometimes absented himself, to drink or play, for a week, or fortnight, and never asked his master's leave for such absence. His master, on his return, was angry, and checked him, but always received him again. During such absence he never worked for his master, nor did he, nor could he, for any other person. He took the same liberty of absenting himself as other persons in the same way. The master had often found fault with him, and asked him to work, which he had refused to do, saying, "I won't work unless you will advance me money;" to which the master said, "it would be worse for him." Masters

(*b*) See Rex v. Arlington, *post*, pl. 330.

do usually advance money to persons hired under those terms. *B.* had said to his master that he could not compel him to work; and the master, in his absence, had said, that he thought he had no right to compel him. It is generally understood at *B.*, that persons hired to work in shops under the above terms may occasionally absent themselves, but cannot work for any other master. Whether the master could or could not prevent *B.* from absenting himself, or compel him to work, did not appear from any facts but those above stated. He was hired again under the same terms, and perfected his service in the same way. — WILLES J. delivered the opinion of the Court as follows: If the hiring is sufficient, there is no doubt of the service; for though the servant was absent at different times, yet he was always received, and served to the end of the year. As to the hiring, the case consists of five points: 1st, The terms of the contract on the hiring *itself*; 2d, The facts found, extrinsic of the contract, by the Quarter Sessions, as the consequence of the hiring; 3d, The apprehension of the pauper; 4th, The apprehension of the master; 5th, The general apprehension of people at *B.* on such a hiring. The three last points may at once be laid out of the case; for the cases (*a*) of *Rex* v. *King's Norton*, *St. Agnes*, and *Buckland-Denham* are solemn decisions, that they cannot vary the contract or alter the constructions of it. In *Rex* v. *King's Norton* it is expressly determined that the pauper's apprehension is immaterial; if so, the master's must be so likewise. Where the particular terms of the contract of hiring do not appear, the apprehension and understanding of the parties may be material to enable the justices to say what the contract was; but where that contract, which is a fact, is settled and found, the law must pronounce upon the words of the contract itself, what *is* the legal import of it, without regard to what the parties or the country *understand* to be the import. A distinction is settled between cases where there is an express exception in terms in the original hiring, and an exception made by the custom of the country, or nature of the service; and the last stated circumstances are expressly determined, in *St. Agnes* and *Buckland-Denham*, not to prevent the party from gaining a settlement. I will next consider what are the facts found by the Quarter Sessions, extrinsic of the contract, as the consequence of the contract. The pauper had no wages; he was to have what he got; if he got nothing he was to have nothing; and he was to work in his master's shop and do no other work. All this is the consequence of the contract and the natural inference from it. He who works by the piece is to have no stipulated wages; if he do no work there is nothing to compute wages upon; and a man who hires himself to do one sort of work only is not compellable to do any other work. Whether a servant is to have any wages or none, what those wages are to be, and how computed, is perfectly immaterial on the question of a hiring for a year. So the pauper's not being obliged to do any other work is no objection to the hiring. In *Rex* v. *St. Agnes* the hiring was particularly to work at stamps for manufacturing tin, and the pauper worked at the stamps daily except *Sundays* and *holidays*, according to the custom of tinners, and he was held to gain a settlement. This brings the case to the question of, What were the terms of the original hiring? They are, to work for the master

(*a*) *Ante*, pl. 305. 310, 311.

for a year, in making screws at so much a gross; and not to work for any other master during that time. This is the whole of the contract; and it seems to me impossible to put any other reasonable construction on it. The words are, "pauper "hires himself to work for *J.* for a year, good earn good hire, to "work for him and no other master, to make screws at so much "a gross." If a man hire himself to A for a year to work for him, he hires himself to work for him for a year. The different dispositions of the words make no difference in the sense. The time, then, for which the contract is made is fixed; it is for a year; the rest of the contract relates only to the wages which the pauper was to receive. The terms "good earn and good hire" are stated to mean nothing more: in truth in this contract they are nugatory; for by the express terms of it the pauper was to have so much a gross for all the screws he made; consequently, the more he made the more money he was to have. But if the Court wanted to be informed what is the meaning of those words, the Quarter Sessions have found, that they may mean *that*, and no more. Therefore, whether they are rejected as meaning nothing more than what is expressly stated in the contract besides, or whether that, which is found to be the true sense and meaning of them, be inserted in their place, the contract is still to work for a year, and the *quantum* of the pay shall depend on the *quantum* of the work. Where is the exception of the terms of the original hiring? There is none. The exception arises from what is afterwards stated to be the general understanding in consequence of such hirings; but it is settled, that a custom or general understanding on the subject will not alter the case, provided the original hiring, in the terms of it, be for a year. In *Rex* v. *Buckland-Denham* the hiring was not for a year; but to work shearman's hours only, and that he should be at his own liberty at all other times: so there was an exception in the original contract of *Sundays* and other times; which ASTON J. takes notice of as distinguishing that case from the case of *St. Agnes*. The contract or hiring in this case, in my apprehension, is not to be distinguished from that in the case of *King's Norton*. There the pauper hired herself for a year to spin yarn at 18*d. per* stone, and was to provide herself with victuals and lodging: here the pauper hired herself for a year, to make screws, at so much a gross: in each case the pauper hired himself for a year; but in neither case he was bound by the operation of law on the contract to serve every day in the year. In the case of *King's Norton*, the woman could not be compelled to spin on a *Sunday*, and yet she gained a settlement; but, if the *Sunday* had been excepted in the original contract, she could not have gained a settlement. The reason and distinction is this; the act of parliament has said, the hiring shall be for a year, *i. e.* for an entire year; and that requisition must, therefore, be complied with: but, when complied with, it is to be expounded and restrained by the general law of the land as to the manner in which it is to be executed; and a service on every day but *Sunday* is, in point of law, a service for the whole year. It was said by *Dunning*, that in the case of *King's Norton*, if the woman did not spin she might be compelled by a justice; so I say here, if the man did not make screws. This in both cases depends upon the terms of the hiring, which I have already endeavoured to show was a hiring for a year in each case.

It was said, this was like the case of a contract not to marry any other person; which is void. But the cases are not at all apposite. To make them like, you must suppose the contract of marriage to be to marry one and not any other person; and that contract would be good: so here the contract to work for *Jennings*, and for no other person, is good and binding.—LEYCESTER relied much on what is said in the case of *Macclesfield* (*a*), and *Buckland-Denham* by WILMOT J. in the first case, and ASTON J. in the other; viz. that the servant must be under the control of his master during the whole year. This general expression, like most others, when used as an universal proposition by itself, tends only to confound and mislead; when applied to the subject-matter it is plain and intelligible. It means only that the contract shall be for the whole year, and that the master, by virtue of that contract, shall be subject to the general law of the land, or particular custom of the place, and, subject to this, shall have a power to compel the servant to work throughout the year: but in the case of *Macclesfield* and *Buckland-Denham* there was no one day in the year, during the whole of which the master, by the terms of the contract, could compel the servant to work; and the engagement was for a certain number of hours in each day only. If the expression were to be understood in as general a sense as may be put upon it, a handicraftsman could never gain a settlement at all: for, however general the hiring may be, he cannot be compelled to work on a *Sunday*, or at unreasonable hours of the night; and, consequently, in one sense, not under the control of the master throughout the whole year. Upon the whole I think there is an express hiring for a year in this case; that whatever, from the custom of the country or nature of the service, may constitute a sufficient performance of that contract, makes no difference on the question, whether the party gains a settlement. That the principle of the case of *King's Norton* governs the present case; and nice distinctions, even if they could be made, ought not to prevail, especially in a case which, probably, will affect the settlements of most of the manufacturers in *England*; and which would operate against what has been, for a great many years past, the rule and leaning of this Court, *viz.* to support and not destroy settlements.

(*a*) *Ante*, pl. 308.

315. *Rex* v. *Winchcombe* (*b*), *E. T.* 20 *G.* 3. *Dougl.* 391.—The pauper hired himself for a year, and at the time of the hiring it was agreed between him and his master, that his wages should be paid weekly, at 8*s.* a week; and that, being a ballotted man in the militia, he should be absent for the month, and, in lieu of that month, should serve another at the end of the year. He was, accordingly, absent 30 days in the militia, and then returned to his service; but he only continued three weeks of the month which was agreed to be served in lieu of the month he was absent in the militia.—LORD MANSFIELD: There is, in this case, a hiring for a year, and there is also a service for a year, if it were not for the month's absence in the militia: a service must be for a continuation, without interruption, or adding together broken pieces to make up the year; but here the agreement as to the absence for a month, in the militia, was only what would have been implied, and what the master must have consented to: the year was completed five weeks before *Michaelmas*, and the additional month agreed for

A militia-man being hired for a year, with an *express exception* that he shall be absent on duty for the month, and in lieu thereof serve a month over the year, gains a settlement, without serving the additional month.
Cald. 94.

(*b*) See Rex *v.* Norton, *ante*, pl. 261.

was only in the nature of a compensation for the want of the pauper's service while absent in the militia, and equivalent to a deduction of so much wages. This case, if not the same, is very like that of *Rex* v. *Westerleigh* (*a*) The Court ought to lean in favour of settlements, and the bad consequences would be very extensive if we were to determine, that a man should lose his settlement by serving his country in the militia. We are all of opinion that this was a good settlement.

(*a*) *Ante*, pl. 312.

An agreement for a year to teach a trade, the servant to find himself in necessaries, and the master to have half his earnings, if he is not retained *eo nomine* as an *apprentice*, is a sufficient *hiring* to gain a settlement.

See Rex *v.* Margam, *post.* pl. 506.
Rex *v.* Highnam, *post.* pl. 501.
Rex *v.* Laindon, *post.* pl. 507.
Rex *v.* Eccleston, *post.* pl. 325.

316. *Rex* v. *Little Bolton* (*b*), *M. T.* 24 *G.* 3. *Cald.* 367.—The pauper, being legally settled in *Little Bolton*, went into the township of *Great Bolton*, where one *W. S.*, a weaver, lived, and asked him, if he would teach him to weave counterpanes; *S.* answered, he would teach him if he would work with him two years and a half or three years; and the pauper's earnings were to be divided between them: the pauper was to find himself with meat, drink, washing, and clothes: he was engaged on these terms, and an agreement, in writing, was entered into accordingly. The pauper staid and worked with *S.* under this agreement, in *Great Bolton*, about a year and a half, and then the pauper gave the master 20*s.* to be free, having then married: he then worked journey-work with the same master near a year: the master (whilst he was working under the agreement) found him looms, loom-room, and materials: he never employed the pauper in any work but weaving: the condition upon which he taught the pauper to weave was only one half of his earnings. *S.* received the money, and paid the pauper one half, and looked on it that he had a right to receive it; but sometimes he let the pauper receive it. The agreement, in writing, was proved to be lost, and, therefore, parol evidence was allowed to be given of it.—LORD MANSFIELD delivered the judgment of the Court. We have looked into the authorities, and we find, that all those cases of apprenticeships which have been holden to be defective, and not convertible into hirings and services, speak of the pauper *as an apprentice*, and that he was to serve as such. There is no such statement here; and we are, therefore, of opinion, that it is a good hiring and service.—WILLES J. The cases that apply are *Rex* v. *Whitchurch Canonicorum* (*c*), *Rex* v. *All Saints in Hereford* (*d*), and *Rex* v. *Kingsweare*.

(*c*) *Post.* pl. 497.
(*d*) Burr. S. C. 656.

Under a common hiring for a year, an agreement in the middle of the year, that the servant shall work by the piece, will not prevent a settlement.—S. C. Cald. 424. Rex *v.* Great Chilton, *post.* pl. 383.

317. *Rex* v. *Alton*, *E. T.* 24 *G.* 3. EDITOR'*s MSS.*—The pauper, *R. J.*, being settled in the parish of *A.*, hired himself to his uncle, *D. J.*, a turner, in the parish of *M.*, for a year. The pauper was to be found in board, lodging, pocket-money, and clothes, by his uncle, for whom he was to work in his trade of a turner, and his master was to have the benefit of his work. After he had served six months, his master finding him idle, he and the pauper came to a new agreement, by which the pauper was to work in the said trade by the piece, and to be paid by the piece for what he should earn; and he was also to find himself in board, lodging, pocket-money, and clothes. On the last-mentioned terms he continued to serve his master to the end of the year: sometimes working by the piece, and then he boarded and lodged out; and at other times he served his master in the house, and then he was lodged and boarded by his master.—THE SESSIONS held, that this new agreement determined the contract, and that the pauper gained no settlement.—BEARCROFT shewed cause: he said, it

(*b*) See Rex *v.* St. Margaret's, King's Lynn, *post*, pl. 339.

was necessary that the whole of the service should be under a hiring for a year. The Court had gone no further than to permit different services under hirings, each for a year, to be coupled together. In this case the new agreement is not a hiring for a year, nor did it bind the servant to work for his master only, so that service under it cannot have any effect.—HURST, *contrà*, said, the new agreement made no alteration in the hiring for a year; it only varied the compensation.—WILLES J. There was no waiver of the original agreement; and it is admitted, that an agreement at first to work by the piece would have been sufficient.—ASHHURST J. I am of the same opinion.—BULLER J. I do not agree with Mr. *Bearcroft's* doctrine, that all the service must be under a hiring for a year; that is not necessary: a service under a hiring for less than a year may be coupled with service under a hiring for a year (*a*), and give a settlement: there are many cases to that purpose. But on the other ground there can be no doubt but the original agreement still continued; and besides, the second hiring being general, would be equivalent to a hiring for a year.—Order quashed.

(*a*) See *post*, sect. ix.

318. *Rex* v. *Newton Toney* (*a*), *E. T.* 28 *G.* 3. 2 *T. R.* 453.—The pauper went into the parish of *N. T.*, to the house of *W. P.*, a publican there, who had before employed him three times to go into *S.* with some hounds; and, on his return from the last of these journeys, he agreed to live with *P.* as ostler at 4*s.* 6*d. per* week, and continued with *P.* as such hostler for one year and a half, and then went away. Before his departure, on demanding his wages, *P.* alleged, that, as he had received vails, 4*s.* 6*d.* a week would be too much; whereupon he agreed to accept after the rate of 10*l.* a year, in lieu of 4*s.* 6*d. per* week. The pauper having received his wages, he left his service, and lived elsewhere for five or six months; at the expiration of which time he returned to *N. T.*, and agreed with *P.* to serve him again as his ostler, as he had done before, at 4*s. per* week, which was about 10*l.* a year; and which he received when he thought proper to ask for it. Under the latter agreement the pauper lived one year and a half, but thought himself as a weekly servant, and at liberty to leave his service at any time during the said two services.—ASHHURST J. The case of *Rex* v. *Dedham* (*b*) is much stronger than the present. There the pauper hired himself to a plumber and glazier, board, lodging, and washing, summer and winter, at 6*s. per* week. And though the pauper continued in his service above a year, the Court said, that they could not make it a hiring for a year, and that the pauper could not gain any settlement by it. It is impossible to distinguish the two cases upon principle. In the present case the pauper hired himself as an ostler at 4*s.* 6*d. per* week; but that cannot be considered as a general hiring; and if either party had chosen to dissolve the contract before the expiration of a year, no action could have been maintained by the other. With respect to the apprehension of the pauper, it has been decided, in a variety of cases, that cannot vary the contract.—BULLER J. This case is not so strong as that of *Rex* v. *Dedham*; for there the expression "summer "and winter" showed, that the party had it in contemplation to continue a year in the service: in the present case the hiring is merely at so much *per* week. Now if there be any thing in the contract to show that the hiring was intended to be for a year,

A hiring at so much a week is not an *implied hiring* for a year. Rex v. Pucklechurch, *post*, pl. 327.

(*b*) *Ante*, pl. 292.

(*a*) See Rex v. Mitcham, *post*, pl. 329.

there a reservation of weekly wages will not control that hiring: but if the payment of weekly wages be the only circumstance from which the duration of the contract is to be collected, it must be taken to be only a weekly hiring. And the hiring in the present case is of that kind. — GROSE J. Considering the situation of the pauper, and what passed at the time of entering into this contract, this appears not to be a hiring for a year. The pauper was hired in the character of ostler, at 4*s.* 6*d.* *per* week; now that circumstance alone shows, that he was not likely to continue a year in his service. Besides, it appears that he actually left his service in the middle of the year, which satisfies me, that it was not intended by the contracting parties to be a hiring for a year. (*a*)

Service under *a hiring* for seven years, to work only 13 hours in the day (and *Sundays* excepted), will not gain a settlement.

319. *Rex* v. *Kingswinford* (*b*), *E. T.* 31 *G.* 3. 4 *T. R.* 219.—The pauper, being settled at *W.* in *October* 1775, entered into an agreement with *B.*, by which he covenanted to work with and serve *B.* as an artificer in the art of a glass-grinder, or in any other art that *B.* should think proper to employ him in, for seven years: that he would not at any time during the term work for or serve any other person; and would not at any time during the term depart from or leave the work and service aforesaid, without the leave or licence of *B.*, his executors, &c. *but would continue and be in such service as aforesaid from six o'clock in the morning till seven in the evening of each day during the said term, including half an hour at breakfast and one hour at dinner times (except on Sundays), if in proper health.* *B.* agreed to provide shop-room for *L.*; to pay him 3*s.* 6*d.* a week during the term; and to provide meat, &c. The pauper served *B.* two years at *B.* under this agreement, and lodged and boarded at *B.*'s. He occasionally worked in the night time; often went on errands for his master on *Sundays*; and never worked with any body else during that time, nor thought himself at liberty so to do. — LORD KENYON C. J. said, that there was no real distinction between this case and that of *Rex* v. *Macclesfield* (*c*), for that the fair construction of this agreement was, that the pauper was to be his own master on *Sundays*, and on other days after he had served the 13 hours,

(*c*) *Ante*, pl. 308.

(*a*) The following case was given up in the ensuing T. T. on the authority of this decision: — Thomas Bowman, the pauper, went to live with Mr. Joseph Rhodes, of St. Mary, Lambeth, Surrey, livery-stable keeper, and post-chaise letter, as under ostler, at 9*s.* *per* week, without fixing any time for the expiration of such service. Some time after he had been there, a post-boy went away, and the pauper was by his master Rhodes turned over to take his place, at 3*s.* *per* week, and the money he could get from the persons he drove. He remained in such service upwards of two years, and more than one in the last employment as post-boy; during the whole time he found himself in victuals, and lodged in a room or loft belonging to his master in the yard, received his 3*s.* *per* week, and what he could get for driving. Some time after the pauper left the said service he returned to it again, when Rhodes told him he might go to work, and then remained one year under that agreement. Some time after he left the service he returned to it a third time, in or about the month of *February*, as an odd man, without wages, and continued under this last agreement till three weeks after *Christmas*. When he first went, he saw, and had some conversation with, the head ostler, and was some days about the yard before he entered into any service; he then asked his master Rhodes for his place, who told him he might have it. — Rex v. Odiham, 2 T. R. 622.

(*b*) See Rex v. Edgmond, *post*, pl. 335.

because he had only covenanted to serve those hours; and that the expression of one was the exclusion of the other. And he added, that it was essential in these cases that the servant should be under the power and coercion of the master during the whole time.—Rule refused.

320. *Rex* v. *Birdbrooke*, *E. T.* 31 *G.* 3. 4 *T. R.* 245. — The pauper, being settled at *B.*, was hired when he was single by *J. O.*, farmer, at *S.*, at 3*s.* a week the year round; each was to be at liberty on a fortnight's notice; but the pauper was not to go away at seed-time, hay, or harvest. He staid in the service a year at *S.*, and received his wages at different times whenever he pleased. — LORD KENYON C. J. No doubt can be entertained on this case: it does not even rest on a general hiring, for this was an express contract to serve "the year round." But it is said, that this cannot be considered to be a hiring for a year, because there was a reservation of weekly wages, and because each party was to be at liberty to put an end to the agreement on giving a fortnight's notice: but whether the wages be to be paid by the week or the year cannot make any alteration in the duration of the service, if the contract be for a year. This, therefore, was a contract for a year at so much a week, with liberty to quit at any time except seed, hay, or harvest time, on giving a fortnight's notice: but the power of giving notice makes no difference; for it has been held, that an agreement to leave the service on giving a month's warning does not defeat the settlement. (*a*) — ASHHURST J. was of the same opinion. — BULLER J. The only question is, Whether this was a yearly or a weekly hiring? In support of the order of Sessions the latter has been contended; but a hiring for a week requiring a fortnight's notice was never heard of.

Service for a year under a *hiring* "at 3*s.* *per* week the year round," with liberty to go on a fortnight's notice, will give a settlement.

(*a*) Rex *v.* New Windsor, *post* pl. 359.

321. *Rex* v. *North Nibley*, *M. T.* 33 *G.* 3. 5 *T. R.* 21. — *T. H.*, who was born at *N. N.*, after working some little time in the clothing way, was hired by *S.*, of *W. U.*, for the term of five years, as a colt shearman, to work 12 hours each day: he was to have so much a week, and was to have the usual quarterage in his master's hands; the reason of which was (as he explained it) to secure the performance of the contract. He neither boarded nor lodged in his master's house, but served him the whole time, and received his wages and quarterage, and lodged the whole time in *W. U.* — LORD KENYON C. J. This question arises on the words of the stat. 8 & 9 *W.* 3. *c.* 30., by which it is enacted, that no hired servant shall gain a settlement, unless such person shall continue and abide in the same service during the space of one whole year. And I think the determination in the case of *Rex* v. *Macclesfield* (*b*) puts this question at rest; for it was there held that there must be a hiring and service for a year, so far that the servant must be under the control and coercion of the master during the whole time. That was not then thrown out for the first time; for in *Rex* v. *Wrinton* (*c*) FOSTER J. said, "a hired servant is always under "the government, discipline, and control of "the master, even on *Sundays*." But it has been argued, that if we now decide that the pauper did not gain a settlement in *W. U.*, we shall overturn many decided cases: but this has no resemblance to those alluded to. In *Rex* v. *King's Norton* (*d*), the contract was expressly stated to be a hiring for a year generally: so in *Rex* v. *Birmingham* (*e*), and in *Rex* v. *St. Agnes* (*g*).

A service under a hiring for five years as *a colt shearman*, to work 12 hours each day, will not give a settlement.

(*b*) *Ante*, pl. 308.

(*c*) *Ante*, pl. 270.

(*d*) *Ante*, pl. 305.

(*e*) *Ante*, pl. 314.

(*g*) *Ante*, pl. 310.

Whereas in this case, taking it altogether, the servant was hired, during the space of five years, to stand in a certain relation to the master, during certain hours in the day; for he was to work 12 hours only. This case is similar to that of *Rex* v. *Buckland Denham* (*a*), where the pauper was hired to serve as a shearman for five years, to work shearman's hours only; which was held sufficient to make an exception as to his service for the rest of the year, though it were not so stated expressly. There is no magic in words; and if the words used be sufficient to convey the ideas of the parties, the Court must decide upon them. And though the word *only* is not used here, the fair import of the words here used conveys the same idea. Though in that case the relation of master and servant was to subsist on certain terms for five years, yet as the time when the labour was to be performed was expressed to be shearman's hours only, the Court said that it was not sufficient to confer a settlement. Between that case, therefore, and the present, I can see no material distinction. I should not have referred to *Rex* v. *Kingswinford* (*b*), because the reasons for that determination were given by me only, had it not been observed that it passed without argument. But it must be remembered that it was immediately acquiesced under by the gentleman who made the motion, and that the decision was that of the Court. The present determination is, I think, supported by every authority in the books. It is admitted, that if there had been an express exception in the contract, no settlement could have been gained by serving under it; and this is equivalent to it, for it amounts to this, that the pauper should be considered as the servant for only 12 hours out of the 24.—GROSE J. The only question is, Whether or not there was a hiring for a year? For I admit, that if there were no exception in the contract of any part of the year, it is a good hiring for a year; but I say here, as was said in a former case, that *expressio unius est exclusio alterius*: and when we consider what each party was to do under the agreement, it is impossible to say that there was not an exception in the contract. The pauper was "hired for five years as a colt "shearman, to work 12 hours each day." Then, could the master have compelled him to serve more, or required any other service of him? Certainly not: he was only under his master's control during those hours; it is the same in substance as if *Sundays* and the rest of the 24 hours had been excepted; it means that the servant should work for 12 hours in the day *only*, and then it comes within the case of *Rex* v. *Buckland Denham*.

(*a*) *Ante*, pl. 311.

(*b*) *Ante*, pl. 319.

If A *club* with B for three years (which signifies one person contracting to serve another for the purpose of being taught some art or trade), and also agree to do any work that B sets him about, a service under this *particular*

322. *Rex* v. *Coltishall*, *E. T.* 33 *G.* 3. 5 *T. R.* 193.—At *Lady-day* 1785, the pauper, being about 18 years of age, and then a bricklayer's labourer, and settled at *H.*, was *clubbed* with *J. R.* of *C.* for three years, at 6*s.* *per* week the first year, 7*s.* *per* week the second year, and 8*s.* *per* week the third year; to board, lodge, and wash for himself; he was to be taught the trade of a bricklayer. The term "clubbing" signifies a person's contracting to serve for the purpose of being taught some art or trade, and to have the less wages on account of learning the trade. An agreement in writing was to be prepared for the three years, but it was never drawn up. The pauper served two years and upwards, and then upon some difference his master and he consented to part. No premium was paid by the pauper to *R.* The pauper was to do any work *R.* set him about; and the pauper was not to

be absent from his business during any part of the time. — LORD KENYON C. J. said, that it was impossible to raise a doubt upon the case; for that the concluding part of it, which stated that the "pauper was to do any work his master set him about," was decisive to show that he must be considered as a hired servant; and that although one of his objects was to learn a trade, that was deemed equivalent to part of his wages. (*a*)

hiring will gain a settlement. See next case.

323. *Rex* v. *Martham*, *H. T.* 41 *G.* 3. 1 *East*, 239. — Two justices removed *E. G.*, *M.* his wife, and their six children by name, from the parish of *St. P.* to *M.* The Sessions, on appeal, confirmed the order, and stated the following case for the opinion of this Court: The pauper, *E. G.* was legally settled at *M.*, where he worked as a labourer with his father, who was a bricklayer there. In 1782, being then 17 or 18 years of age, he came to the parish of *St. P.*, and worked as a labourer with *C.*, a bricklayer, for about six months, when by an agreement made by the pauper's uncles, *J.* and *F. L.*, he was clubbed to his said master for three years, at the wages of 7*s.* *per* week for the first year, 8*s.* for the second, and 9*s.* for the third, to learn the trade of a bricklayer, and to do any other work his master might set him about. The above wages were the usual wages of a bricklayer at that time. The pauper was to board, lodge, and wash for himself; and if prevented at any time from working by badness of weather, illness, or from his master not having employment for him, a proportional deduction was to be made from his week's wages for such loss of time. Occasional deductions of a day or two's labour were made. The pauper sometimes drove his master's cart employed in his business, and sometimes drove his mistress an airing. Whenever he was employed by his master, either as a bricklayer, or as above stated, no deduction was made from his wages. He continued three years in the employment of his master under the preceding contract. From these circumstances the Sessions considered this as a contract of apprenticeship between the parties, and confirmed the order. When this case was called on, the Court asked the counsel in support of the order, Whether it were possible to distinguish this from the case of *Rex* v. *Coltishall* (*b*), where a settlement was gained by serving under such a hiring? — WILSON and MARSH attempted to distinguish the cases, by observing that here was a stipulation in the contract, that in case of illness, bad weather, or want of employment, the pauper was to have no wages: whereas to enable one to gain a settlement by hiring and service, the contract must continue during the whole year. But the necessary construction of this agreement must be, that if the master had no employment for the pauper, or the weather were too bad to admit of his usual work, in which cases he was to have no wages, he should be at liberty to work for any other master. — But THE COURT thought that this did not sufficiently vary this case from the former: and that if they drew such refined distinctions they should leave the justices below without any rule to guide their determinations. — Both orders quashed.

A clubbed with B for three years, at a certain rate of weekly wages, with a *proviso* that if he were prevented from working by bad weather, illness, or want of employment, there should be a proportionable deduction of wages: Held, that A gained a settlement by serving a year under this hiring, though occasional deductions on these accounts were made.

(*b*) *Ante*, pl. 322.

344. *Rex* v. *Over*, *T. T.* 41 *G.* 3. 1 *East*, 599. — *R.* let himself two days after *Michaelmas* 1799 for a year to *W. D.* of *O.*, at the wages of 6*l.* 6*s.*; but that being a pensioner of the *East India* Company, he was to have two days in each half year to

A pensioner of the *East India Company* hiring himself as a servant for a year, with a reserva-

(*a*) *Vide* Rex v. Little Bolton, *ante*, pl. 316.

tion to himself of two days in each half year when he might go for his pension, cannot gain a settlement by service under such a contract.

himself, to go to *St. I.* to receive his pension. He remained in his said service till old *Michaelmas-day* 1800, being a *Saturday*, when his master went to him in the field, and asked him if he would stay again. The pauper said he wanted more wages: he should expect 7*l.* 7*s.* a year; which his master refused to give. His master then asked him whether he intended to go to *St. I.*'s fair that day. The pauper said he did. He then unyoked his horses and went to the fair, where his master paid him part of his wages. On the next day (*Sunday*) the pauper returned to his master at *O.*: on that day he settled his wages, when his master asked him if he would stay again, which he assented to. The pauper then let himself to *D.* again for another year at the wages of 6*l.* 6*s.*; but the pauper expressly said he should expect to have the two days in each half year to go to *St. I.*'s for his pension as before; which his master consented to. He continued with *D.* under this second hiring for about 11 weeks, when the pauper was apprehended for a bastard child. His master settled his wages, and the contract for the service was dissolved by mutual consent. The Sessions were of opinion that the pauper's hiring and service with *D.*, at *O.*, were effectual to gain him a settlement there. — LORD KENYON C. J. said, there was no colour for contending that the pauper gained a settlement by this hiring and service. The case of the militia-man went altogether upon the ground that the leave of absence stipulated for was no other than what the law would have compelled without any such stipulation. It was part of the public service. No conclusion, therefore, can be drawn from thence in support of this settlement. Here was an express exception of four days in the year, during which the pauper was not to be under the control of the master. An express reservation of *Sundays* out of the original contract of hiring was considered sufficient in *Rex* v. *Macclesfield* (*a*) to prevent the gaining of a settlement under it. — PER CURIAM, both orders quashed.

(*a*) *Ante*, pl. 308.

Where the pauper agreed with a weaver to serve him for a year and a half, and the master was *to teach him to weave*, and the pauper was to have half his earnings, and find himself in every thing: under which contract the pauper served his master for above a year: Held, that he thereby gained a settlement as by hiring and service; it being the apparent intention of the parties to create

325. *Rex* v. *Eccleston*, *E. T.* 42 *G.* 3. 2 *East*, 298.—The pauper, when about 15 years of age, went into the township of *T.*, and made a verbal agreement with one *Clough* there, who was a weaver of counterpanes, to serve him a year and a half. *C.* was to teach him to weave counterpanes; and the pauper was to have one half of what he earned; and the pauper was to find himself in every thing. Nothing else passed between them on making the agreement. The pauper worked under this agreement with *C.* for the year and a half, except for a fortnight; during which he remained absent; but *C.* however brought him back into his service, and obliged him to stay a fortnight over the year and a half, in order to make up the time he had been absent from his service. During the time of this service he slept constantly at his mother's house at *Little Bolton*. — LORD ELLENBOROUGH C. J. I give a reluctant assent to the case of the *King* v. *Little Bolton*; but as the case now before us is in terms the same as was there decided, I think it is better to abide by that determination than to introduce uncertainty into this branch of the law; it being often of more importance to have the rule settled than to determine what it shall be. I am not, however, convinced by the reasoning of that case; and if the point were new, I should think otherwise. I should consider, as Lord *Kenyon* said in *Rex* v. *Laindon*, that if the relation of master and apprentice be created by the contract of

the parties, though they do not use the very words *master* and *apprentice*, yet if they use words tantamount, it is sufficient. The word *apprentice*, he observed, was taken from *apprendre*, to learn; and what was that but an apprenticeship, where the purpose of the contract was for one man to teach, and the other to learn a trade? Then what was this intended to be? I should have said, upon general reasoning, that where the contract was, that the master should teach the other a trade, and the latter was to do nothing ulterior the employment in that trade, it was a contract *apprendre*, in the true sense of the word; and being defective in this case, for want of proper legal formalities, it could not enure as a contract of hiring as a servant. However, as Lord *Kenyon* did not think proper to overrule the case of the *King* v. *Little Bolton* (*a*) in terms; though he disapproved of what was there said; and as it was not overturned in the case of *Rex* v. *Highnam* (*b*), or *Rex* v. *Rainham*, (*c*) for the reason I at first gave I think it better to concur in that decision, however unwilling I should have been to have done so in the first instance. — GROSE J. This case so exactly resembles that of *Rex* v. *Little Bolton*, that I cannot distinguish them. — LAWRENCE J. It is of infinite consequence in these cases, that what has been once expressly determined should be adhered to. The case referred to is directly in point; and not having been over-ruled, it ought to govern the present. The *King* v. *Laindon* (*d*) and the *King* v. *Rainham* are both very distinguishable from the present. — LE BLANC J. The case of the *King* v. *Little Bolton* is a direct authority to the present point; and that case has never been over-ruled in terms; neither do I think that it has been over-ruled in principle. — The orders quashed.

the relation of master and servant, and not that of master and apprentice.

(*a*) *Ante*, pl. 316.

(*b*) *Post.* pl. 501.

(*c*) *Post.* pl. 509.

(*d*) *Post.* pl. 507.

326. *Rex* v. *Hanbury* (*a*), *T. T.* 42 *G.* 3. 2 *East*, 423. — The pauper, *J. Freeman*, a blacksmith, went 36 years ago to one *Saunders* a blacksmith at *H.*, to know if he wanted a man. *S.* told him he might come to work for a day or two, and he should see what he could do. The pauper went accordingly on the following *Monday* morning, and after two or three days' trial *S.* approving of him, the pauper agreed to work for *S.* as a blacksmith, at 3*s.* 6*d.* a week, with meat, drink, washing, and lodging at *S.*'s house, and to part on a week's notice by either party. No such notice was ever given; but the pauper continued to serve *S.* until the time of his death, which happened about six years afterwards, without any alteration of terms, except that after he had served about four years the wages were raised from 3*s.* 6*d.* to 4*s.* a week. The pauper constantly received his week's wages every *Saturday* night or *Sunday* morning. He went where he pleased on *Sundays* without asking leave of his master; though he was entitled to his board on *Sundays* as well as on other days if he chose to stay at home. He did not work on *Sundays* as the apprentices did who were kept at home for that purpose, except occasionally when asked by his master. On other days if he wanted a holiday he used to ask his master for it, who gave it him, deducting his wages for the time. His master also used frequently to set him task work for the day, which he sometimes finished in half the day, and then he was at liberty for the rest; but he frequently did over-work upon those occasions; and then he was paid for such over-work.—The Sessions, being of opinion that this

A hiring *at so much a week*, meat, drink, washing, and lodging, and to part *on a week's notice* by either party, will not warrant a conclusion of a *general* hiring, though the servant continued six years with the master, and the wages were raised during the period: and, therefore, no settlement can be gained under such hiring and service.

(*a*) See Rex v. Mitcham, *post*, pl. 329.

was a general hiring, confirmed the order. — LORD ELLENBOROUGH C. J. The cases of *Rex* v. *Dedham* (*a*), *Rex* v. *Brandninch* (*b*), and *Rex* v. *Newton Toney* (*c*), have expressly decided this point. The first of these was much stronger than the present: for that was a hiring at so much a week, "summer and "winter." But Lord *Mansfield* said that all the cases required a hiring for a year; but that was only a hiring at so much a week. So in *Rex* v. *Brandninch*, Lord *Mansfield* observed, that the pauper was under no obligation to serve for a year; and unless that be so, it is clear there can be no settlement gained. The case of *Hampreston* turned on the circumstance of a month's notice to quit being required; but here the contract was determinable at a week's notice. And though the Sessions have drawn a conclusion that this was a general hiring, yet it is clear that they meant only to state it as a conclusion of law from the antecedent facts, the propriety of which they meant to refer to us. But here there is no ground for presuming a general hiring; for it appears expressly what the original agreement was in fact, which negatives a hiring for a year. — PER CURIAM: both orders quashed.

(*a*) *Ante*, pl. 292.
(*b*) *Ante*, pl. 293.
(*c*) *Ante*, pl. 318. and *vide* Rex v. Odiham, *ante*, page 250. n.

Where nothing is said in a contract of hiring about time but a reservation of *weekly* wages, it is a *weekly* hiring only. Therefore, where the contract was for the servant *to live* with his master, the latter finding him board and lodging, and *paying* him 2*s.* 6*d.* *per* week, no settlement could be gained by service for more than a year under such contract.

327. *Rex* v. *Pucklechurch* (*a*), *T. T.* 44 *G.* 3. 5 *East*, 382.—The pauper being settled in *W.* about 10 years ago hired himself to *King* of *P.* for eight weeks, ending at *Midsummer*, at 5*s.* *per* week, at which time he hired himself again to the same master at 4*s.* *per* week till the *Michaelmas* following. At *Michaelmas* he entered into a new agreement with his master to live, the master finding him board and lodging, and paying him 2*s.* 6*d.* *per* week; but no time was fixed or talked of by the master or servant for the duration of the contract. When the summer season arrived the pauper said to his master, "I must have more now, I believe, "master:" The master said, "How much more?" and his wages were increased. And so as the winter or summer succeeded his wages were accordingly reduced or increased. At the time when the alteration of wages took place there was no conversation as to leaving the service or dissolving the contract. The alterations of wages took place at the beginning of the week. He entered and left his service on the same day of the week, being *Sunday*. There was a general settlement at the time he left the service with respect to wages, and some dispute, but he could not remember what it was. The pauper was more than once absent from his master's service two or three days at a time to see his friends, with his master's consent. He served in the whole five years and a quarter, and received money on account of wages at different times, sometimes 1*l.* 1*s.* and sometimes more; but there was no complete settlement of wages till he and his master parted. But at the time he was not paid so much as he thought he was entitled to; but whether on account of absence or not he did not know.— LORD ELLENBOROUGH C.J. If nothing be said as to the term of the service but that the servant shall have weekly pay, it must *primâ facie* be understood that the parties intended a weekly hiring and service. But circumstances may show a different intent. Then, are there such circumstances in this case, from which we can fairly collect that the parties intended a hiring for a year? In the first instance the hiring was for a specific term of eight weeks;

(*a*) See Rex v. Warminster, *ante*, pl. 287.

the second hiring was also for a definite time short of a year. No time was mentioned for a third hiring, but it was a hiring at *weekly* wages. Then it falls within the cases of *Dedham* (*a*) of *Bradninch*, (*b*) of *Newton Toney*, (*c*) and others of the same class; where a hiring weekly wages has been holden to be a weekly hiring. And if it wanted any additional circumstance the conduct of the parties themselves afterwards shows that they so considered it; for the servant left his master at the end of the week in the middle of a year. If an indefinite hiring were stated on a record, and nothing shown to control it, it will be deemed a hiring for a year: but that is in the absence of any circumstance from whence a different intent is to be collected: and here weekly wages being reserved, and nothing else added to show an intention to extend the contract further, will induce the conclusion in law of a weekly hiring and service intended by the parties. There is a current of authorities to this point. — GROSE J. A reservation of weekly wages will make a weekly hiring, if nothing appear to the contrary. And here the circumstances do not furnish any other inference. In the first and second hirings certain definite times were mentioned, where it was meant to extend the contract beyond a weekly hiring: but at the third hiring there was nothing said, from whence the intended duration of it was to be collected, but the reservation of weekly wages. It appears also that the wages varied from time to time at the different seasons of the year. That cannot furnish the inference of an implied hiring for a year; for then the wages must have continued the same as they were at first settled. The third hiring, therefore, was not a general hiring, but a hiring from week to week. — LAWRENCE J. I thought the law had been perfectly settled since the case of *Newton Toney;* for the rule was there laid down, that if there were any thing in the contract of hiring to show that it was intended to be for a year, the reservation of weekly wages would not control it; but if the payment of weekly wages were the only circumstance from which the duration of the contract was to be collected, it must be taken to be only a weekly hiring. Then what is this but a weekly hiring by that rule? The point having been before precisely determined, this case ought not to have been brought up. — LE BLANC J. Neither the first nor the second hiring can be pretended to give a settlement. Then as to the third, it is clearly a hiring for weekly wages, and there is nothing to denote that it was for a year except that no time was mentioned, from whence it is contended that in contemplation of law it must be taken to be a yearly hiring. But it has been holden that a reservation of weekly wages, without more, is only a weekly hiring. But if there were any doubt of that, there is another circumstance confirmatory of that construction; for the servant in the middle of the year required an advance of wages, which the master acceded to without any question; a circumstance which was scarcely probable to have happened if the parties had considered that they had contracted for a year. These circumstances therefore rebut any implication of law, that this was a yearly hiring. — LORD ELLENBOROUGH C. J. then added, that he hoped it would be understood in future, that where nothing was said in the contract about time, but a reservation of weekly wages, it was only a weekly hiring. — Order of Sessions quashed.

(*a*) *Ante*, pl. 292.
(*b*) *Ante*, pl. 293.
(*c*) *Ante*, pl. 318.

A hiring at 6*s.* *per* month, with a month's wages or a month's warning is a monthly and not a constructive yearly hiring, and it is no more if after serving for a time, the mistress tell the servant that if she would *stay on*, she should have 8*s.* *per* month, and *live on* with a month's wages or warning *as before*.

328. *Rex* v. *Tollishunt Knights*, *H. T.* 47 *G.* 3. — Two justices, by an order, removed *A. P.* from *T.* to *A.* — The Sessions on appeal, quashed the order, subject, &c. The pauper, at *Michaelmas* 1804, let herself to *S. G.*, of *A.*, at the wages of 3*l.* if she would stay the whole year, subject to determination on either side, upon payment of one month's wages, or giving one month's warning. She continued in that service for one whole year till *Michaelmas* 1805, and then quitted the service, and received her full wages. One month after *Michaelmas* 1805, the pauper let herself to Mrs. *H.*, wife of *E. H.* of *W. A.*, farmer, *at* 6*s.* *per month, with a month's wages or a month's warning*. About *Midsummer* 1806, *H.* removed with his family to a farm at *T.*, and the pauper with him. At *Michaelmas* 1806, her mistress told her that if she would *stay on*, as there would be some additional work, she should have 8*s.* *per* month, and *live on with a month's wages or a month's warning as before*. To this the pauper consented, and continued in the service about six weeks longer; making in the whole a year, a fortnight, and two days, when her mistress discharged her on account of her being with child, and paid her a month's wages in advance, not having given her a month's warning. — BOSANQUET, in support of the order of Sessions, argued, first, that the original hiring, explained by the conduct of the parties, amounted to a yearly hiring; or if not, secondly, that such a hiring took place at *Michaelmas* 1806. The principles deducible from all the cases are, that if the period of hiring be left indefinite the law implies that it was for a year. (*a*) That though, if nothing appear in the contract as to its duration, except a reservation of monthly or weekly wages, it will only be deemed to be a monthly or weekly hiring (*b*); yet that such a reservation will not control the implication of law, if any thing appear in the terms of the contract, or may be collected from the acts of the parties, to show that they meant to contract for a longer period respectively. But that where the facts of the case are ambiguous, the Court will construe them consistently with the conclusion drawn by the Quarter Sessions. First, it is evident that the original contract was to be in force longer than a month, for it could not be determined without a month's warning, or, what was equivalent, a month's wages. And as such warning might have been given at any day to quit at a month from that day, and was not restricted to a quitting at the end of each month, the duration of the contract was indefinite; and therefore, by construction of law, must be deemed a general hiring for a year, determinable by a month's warning or wages; as was said by Lord *Kenyon* in *Rex* v. *Hampreston* (*c*), where the hiring was to serve at so much a week, with liberty to part on a month's notice. The only cases which bear against this are *Rex* v. *Clare* (*d*), where, though the general terms of the contract were the same as this, yet there was an express exception of the harvest month; and the grounds of the decision not appearing may be referable to that exception; and also *Rex* v. *Hanbury* (*e*), where the agreement being at 3*s.* 6*d.* a week, with liberty to part at a week's notice, the Court held it only a weekly hiring. But there were circumstances in the case to show that a yearly hiring was not in the contemplation of the parties, and the Sessions had drawn that conclusion; *Sundays* were excepted, and the wages were regularly paid every week; and these circumstances were relied on in argument.

(*a*) Co. Litt. 42 b.

(*b*) Rex v. Newton Toney, *Ante*, pl. 318. Rex v. Pucklechurch, *ante*, pl. 327.

(*c*) *Ante*, pl. 301.

(*d*) *Ante*, pl. 295.

(*e*) *Ante*, pl. 326.

Secondly, at any rate there was a general contract of hiring at *Michaelmas*, when the mistress told the pauper, that if she would *stay on*, she should have more wages, and *live on* with a month's wages or warning as before. As in *Rex* v. *Macclesfield* (*a*), where, after a hiring of 11 months, the master said, "you may as well "*stay on an end* in your place;" which was adjudged to be a general hiring, and not to have reference to the antecedent hiring for 11 months only. — LORD ELLENBOROUGH C. J. In the case last mentioned Lord *Kenyon* observed, that the master telling the servant that he might *stay on an end* in his place, meant, in the part of the country where that case arose, a hiring for an indefinite time. Here the words *an end* do not occur; but instead of them are to be found the words *as before*; she was to *live on* with a month's wages or warning *as before*. The cases, therefore, are dissimilar. It is impossible, however, to distinguish this case from that of *Rex* v. *Hanbury*; and, therefore, unless that decision can be shown to be mistaken, it must conclude the present. — LAWRENCE J. In the case of *Rex* v. *Hanbury* there was no exception of *Sundays* out of the contract; but it was only stated, that the pauper did not work on *Sundays*, which is no more than what the law would have exempted him from doing. I thought that case had settled the law so plainly, that no more cases of this description would have been sent up to us. — PER CURIAM. Absent GROSE J. — Order of Sessions quashed.

(*a*) *Ante*, pl. 306.

329. *Rex* v. *Mitcham*, *E. T.* 50 *G.* 3. 12 *East*, 351. — Removal from *M.* to *B.* Order quashed, subject, &c. The pauper being settled in *B.*, was hired by *G.*, in *E.*, *at* 3*s. a week for as long a time as his master and himself could agree*; and continued to serve under such hiring for more than a year. *Rex* v. *St. Ebbs* (*b*), was cited. — LORD ELLENBOROUGH C. J. That was an indefinite hiring, at the rate of so much a year, determinable at the end of the first quarter. This case is nothing more than a hiring at so much a week, which, where nothing else appears to the contrary, is a weekly hiring within the rule laid down in *Rex* v. *Newton Toney* (*c*); and it cannot alter the case by adding that which must necessarily have been understood, that the hiring was to continue as long as the master and servant agreed; that is, from week to week. — LE BLANC J. The case of *Rex* v. *Hanbury* (*d*), which was subsequent to that of *Hampreston* (*e*), confirmed the rule laid down in *Rex* v. *Newton Toney*. — Order of Sessions quashed.

A hiring at so much a week for as long a time as the master and servant could agree, is only a weekly hiring.

(*b*) *Post*, pl. 361.

(*c*) *Ante*, pl. 318.

(*d*) *Ante*, pl. 326.

(*e*) *Ante*, pl. 301.

330. *Rex* v. *Arlington*, *T. T.* 53 *G.* 3. 1 *M.* & *S.* 622. — Removal from *A.* to *W.* Order quashed, subject, &c. The pauper was hired for a year as shepherd to *J. K.*, of *W.*, to receive 13*s.* 6*d. per* week wages, and to be at liberty to be absent during the sheep-shearing season, but to find a fit man at his own expence, to do his work during the time of his absence, but his own wages of 13*s.* 6*d.* a week were to go on during the whole time. The pauper served the year in *W.* accordingly, was absent during the sheep-shearing season, and employed and paid a person to tend the flock, but occasionally returned during that period, and assisted in the management of it, especially on *Sunday*, and from time to time gave directions to the person employed by him. *Rex* v. *Empingham* (*g*) was cited. — LORD ELLENBOROUGH C. J. It has never been determined that a contract for service by deputy

Hiring for a year at 13*s.* 6*d. per* week, and to be at liberty to be absent during the sheep-shearing season, but to find a fit man *at his own expence*, to do his work during his absence, *but his own wages to go on during the whole time*, will not gain a settlement.

(*g*) *Ante*, pl. 313.

is service by himself. The distinction taken in all the cases is, Whether the liberty of absence forms a part of the original contract, so as to be an exception out of it, or whether it be by permission of the master during the continuance of the contract? If this hiring could be deemed to confer a settlement, the consequence would be, that a person might gain as many settlements as there are 40 days in a year. He might hire himself to *A.*, with liberty to be absent with *B.* and *C.*, and so on; and if he could get 40 days' service with each, he might accumulate eight or nine settlements in the course of the year. Such a consequence would be preposterous. What does this hiring really mean? A hiring for a year is where the servant is to be under the control and command of his master for the whole year; but here the pauper was not to be so, but he was to be at liberty to find a substitute for the sheep-shearing season. The case will scarcely bear a serious argument. It has been laid down in *Rex* v. *Empingham*, and other cases, that if it be an exception out of the original contract at the time of making it, no settlement can be gained under it; here it was an exception, and, therefore, no settlement. — Order of Sessions confirmed.

A servant in husbandry, hired to serve for the weekly wages of 4*s.* board, washing, and lodging, except in the harvest month, when his wages were to be increased to 10*s.* 6*d. per* week, and then again to be reduced to 4*s.*, does not gain a settlement, for that is only a weekly hiring.

331. *Rex* v. *Dodderhill*, *M. T.* 55 *G.* 3. 3 *M.* & *S.* 243. — Removal from *D.* to *St. P.* — Order quashed, subject, &c. — The pauper hired himself as a servant in husbandry to one *B.*, of *St. P.*, to serve him for the weekly wages of 4*s.*, board, washing, and lodging, except in the harvest month, when his wages were to be increased to 10*s.* 6*d. per* week, and then again to be reduced to 4*s.* At the time of the hiring nothing was said as to the length of time the pauper was to continue in the service of *B.* Under the above hiring the pauper served *B.* 18 months in *St. P.*, receiving the wages as agreed upon. — LORD ELLENBOROUGH, C. J. I take the rule of law to be, that if no particular time is expressed for the continuance of the service, or is reasonably to be implied, a hiring for a year is to be intended. But it has also been laid down, that a reservation of weekly wages imports a hiring by the week, unless the inference which arises from the reservation of weekly wages be repelled by other circumstances. Where there is liberty to part at a month's notice, that imports, that as there must be a month to determine the contract, the reservation of weekly wages is not to limit the duration of the contract, and therefore it becomes a hiring unlimited in duration, which the law terms a general hiring or a hiring for a year. What is the case here? The hiring is at weekly wages, except in the harvest month, when the servant is to be paid according to a higher rate of weekly wages during that month; he is to be paid 10*s.* 6*d. per* week, the parties contemplating the possibility of the service continuing during the harvest month. If the exception had been "*for* the harvest month," instead of "*in* the harvest month," it might have afforded a more plausible argument that the contract was meant to endure at least for the period of a month; or if, instead of 10*s.* 6*d.* a week, it had been stipulated that the servant should receive 2*l.* 2*s.* for the month, that would have imported a consolidated month, and might have repelled, on the same principle as the month's notice, the inference arising from the reservation of weekly wages; but that is not the language of this contract. All that is stated here is the payment of weekly

wages, which according to the cases controls the duration of the contract.— LE BLANC J. I am of the same opinion. The case is perfectly clear. The pauper was hired as a servant in husbandry at weekly wages, which is a weekly hiring, because if there be nothing else to ascertain the duration of the hiring, the payment of the wages shall ascertain it. Is there any circumstance here to show that the hiring was intended to be for more than by the week? If there be any such circumstance, then it will be a yearly hiring, unless it can be shown that it was intended to be for a less period. Now the only circumstance is this, that in the harvest month the weekly wages were to be increased, and afterwards reduced. Is that more than was expressed in *Rex* v. *Dedham* (*a*), where the pauper let himself at 6*s*. a week, summer and winter? That was understood if the parties should happen to go on together summer and winter, and so it must be understood here if they should continue until the harvest month. So in *Rex* v. *Mitcham* (*b*), a hiring at so much a week for as long a time as the master and servant could agree, was held to be a weekly hiring, being a hiring for so long as they could agree from week to week. Here it is in effect so long as the parties can agree, and if they should go on to the harvest month, then from week to week at a higher rate of wages during that month. — BAYLEY J. There is nothing to show that the master bound himself to keep the man, or the man to serve the master, for a year. The parties were only providing, that in case the weekly contract should continue up to the harvest month, the weekly wages should be increased. There was no obligation either upon the master or the servant to continue it beyond the week. — Order of Sessions confirmed.

(*a*) *Ante*, pl. 292.

(*b*) *Ante*, pl. 329.

A hiring at 8*s*. *per* week, *and* 2*l*. 2*s*. *for the harvest*, to do any thing the gardener should set him about, is not a yearly hiring.

332. *Rex* v. *Lambeth*, *T. T.* 55 *G.* 3. 4 *M. & S.* 315.—Removal from *L.* to *E. G.*— Order quashed, subject, &c. The pauper was hired at 8*s*. *per* week, and 2*l*. 2*s*. for the harvest, to do any thing the gardener should set him about, and under this hiring he served four years in *C.* The Sessions were of opinion that the pauper gained a settlement in *C.* But *per* LORD ELLENBOROUGH C. J. It does not distinctly appear whether the 2*l*. 2*s*. were to be paid *de incremento*, or were to cover the whole harvest. All that appears is, that the hiring being by the week, the parties contemplated that possibly it might last through the harvest. — Order of Sessions quashed.

A pauper agreed to serve as a brick-maker from *Michaelmas* to *Michaelmas*, and to make 70,000 bricks at a stipulated price: Held, that this was not a contract for a year's service absolutely; but to serve till the completion of the job, and

333. *Rex* v. *Woodhurst*, *H. T.* 58 *G.* 3. 1 *B. & A.* 325. — Removal from *St. I.* to *W.* — Order confirmed, subject, &c. — In the year 1809 the pauper, *G. H.*, being legally settled in *W.*, was hired by *W. M.* of *St. I.*, brick-maker, to work in *St. I.*, under the following written agreement: "I, *G. H.*, have this day "agreed to serve *W. M.* as a brick-maker, from *Michaelmas* to "*Michaelmas* again. The said *G. H.* engages to make 70,000 "bricks at so much for digging and turning, so much for moulding "and making, and so much for running to the kiln." This was all the contract; nothing was said as to the time he was to begin to dig; he probably began in *November*, and then worked on the said kilns under that contract, not having finished his 70,000 bricks till after *Michaelmas* following. It appeared from the evidence of the master and pauper, that as soon as the pauper had made the 70,000 bricks according to his contract, his master had

that a settlement was not thereby gained.

no control over him, and he might go where he pleased, even if it was a month before *Michaelmas*, and if he stopped and made more than 70,000 bricks, he was to be paid for them, and the master could set him to no other work than brick-making. This was the custom of those kilns, but the pauper this year did not finish his contract till after *Michaelmas*. The pauper lodged and boarded himself in *St. I.*, and drew so much money on account of the bricks in the winter, and so much in the summer, and when the bricks were all made, the account was settled between the pauper and his master. — LORD ELLENBOROUGH C. J. In this case the Court can entertain no doubt. There was not a contract which, properly speaking, had relation to time. The pauper engages to serve only until a particular job be done; if the bricks were made before the year expired, his service would terminate. So that, unless he finished the last brick exactly at the year's end, which would be very improbable, he would not serve for a year. It is, therefore, a contract only for that individual job, and the introduction of time into the agreement is totally irrelevant. — Order of Sessions confirmed.

A pauper was hired for a year from *Old Michaelmas*, to go away a month at harvest, and to make up the time after *Michaelmas*: Held, that this was not a hiring for a year, and no settlement was thereby gained.

334. *Rex* v. *Turvey*, *E. T.* 59 *G.* 3. 2 *B. & A.* 520. — Removal from *S.* to *T.* — Order confirmed, subject, &c. — The pauper, being legally settled at *T.*, was hired by *W. B.* of *S.* The terms of the hiring were a year from *Old Michaelmas*; to go away a month at harvest, and make the time after *Michaelmas*. He went away for a month at harvest, and continued in his master's service a month after *Michaelmas*. — ABBOTT C. J. It has been decided in this Court, that where there has been a hiring for a year, and a service for a year, although that service has not been under one hiring, the servant gains a settlement. But I hope no rash genius will ever carry the matter any further. The only question here is, What is the meaning of the word "year" in this statute? I apprehend the legislature most clearly to have meant, one entire constructive period of 365 days. Unless that were so, we might have to deduce a settlement of a pauper, by taking different unconnected days and weeks from a long series of years, so as to make up in the whole a year's service. And so it would happen that a hiring for the month of *August*, for this and 11 successive years, would amount to a hiring for one year. I have often lamented, that in so many instances the Court has departed from the plain and literal construction of the statutes relating to the settlement of the poor. As far as the authorities go, I have always held, and shall always continue to hold myself bound; but, where they are silent, I shall feel myself bound to construe these acts of parliament according to the plain and popular meaning of their words. For these reasons I am of opinion, that this order of Sessions should be confirmed. — BAYLEY J. The cases of *Rex* v. *Buckland* (*a*), and *Rex* v. *Rushulme* (*b*), are in point, and the latter is much stronger than the present. For there, though there was a hiring, which was to last in the whole for four years, yet there being no stipulation for a service for any one consecutive year, the Court held that no settlement was gained. — HOLROYD J. concurred. — Order of Sessions confirmed.

(*a*) *Ante*, pl. 311.

(*b*) *Ante*, pl. 278.

A pauper in consideration of weekly wages,

335. *Rex* v. *Edgmond*, *M. T.* 60 *G.* 3. & 1 *G.* 4. 3 *B. & A.* 107. — Removal from *M.* to *E.* Order confirmed, subject, &c. The

respondents having proved a settlement in *E.*, the appellants put in an agreement entered into by the pauper with Messrs. *J. & E.*, who were bricklayers and plasterers at *Stoke-upon-Trent*, and contended, that, having served under it for a year and a half, he had gained a settlement by hiring and service in that place. The agreement was dated *July* 9, 1803, and recited that the pauper, in consideration of certain wages, did agree to serve Messrs. *J. & E.* from the day of the date thereof, for the term of three years, if he should so long live. And it then stated, that Messrs. *J. & E.* did agree to provide for the pauper during the first year of the said term the sum of 13*s. per* week; but, in case he should neglect his master's business, or lose any time on his own account, in any one week during the first year of the term, then he consented that Messrs. *J. & E.* should be allowed to deduct from his weekly wages, in proportion to the time neglected or lost on his own account. And Messrs. *J. & E.* agreed, that in case the pauper should earn any over-work in any one week during the first year of the said term, then they would pay him wages for such over-work, equally in proportion to his daily wages, or weekly wages, during the first year of the term. There were similar stipulations for the second and third years of the term, the rate of wages only being altered for each year. The agreement also contained the following clause. "And it is hereby mutually agreed "upon, by and between all the said parties, that in case they "cannot work through severity of weather in any one year, in the "winter time, during the said term of three years, then the said "*J. & E.* shall pay no wages unto the said pauper during such "severity of weather, but shall and will permit and suffer the "said pauper to employ himself in any other business whatever "during such severity of weather with respect to frost."— ABBOTT C. J. It appears to me, that in this case no settlement was gained by this service; for the agreement contains in substance an engagement by the pauper to work only during certain hours in each day; and I do not see what remedy the master could have had, supposing the pauper had refused to work after the usual hours. It is necessary that there should be a covenant to serve for the whole year; but, taking the whole of this agreement together, it seems to me only to contain a promise to serve for a part of the year. I, therefore, think that the Sessions have come to the correct conclusion in this case, and that we ought to confirm their order. — BAYLEY J. The rule of law is, that if there be an express exception in the contract, it will not confer a settlement; but if it be not so, although by the usage of trade certain exceptions are impliedly introduced, still they will not prevent a settlement. The question, therefore, is, whether there be in this contract any express exceptions; and it seems to me, that there clearly is one, namely, the period of frost. The contract, it is to be observed, is general, and not confined to a service in the particular trade of a bricklayer; and, at the conclusion of the agreement, there is this provision, that in case they cannot work through severity of weather, in any one year, in the winter time, during the term, the master shall pay no wages to the pauper during that time, but shall permit him to employ himself in any other business whatever. Under this contract, therefore, he might engage to serve other persons, and so might contract inconsistent relations at

agreed to serve *J. E.* a bricklayer, for three years; but, in case he should neglect his master's business, or lose any time on his own account in any one week during the first year; then that *J. E.* should deduct from his weekly wages in proportion; and *J. S.* agreed that he would pay wages in proportion to any overwork which the pauper might do in any one week. There were similar stipulations for the second and third years of the term; and it was also agreed, that in case they could not work through severity of weather in any one year, in the winter time, then that *J. S.* should pay no wages during that time, but should permit the pauper to employ himself in any other business whatever: Held, that these were express exceptions in the contract; and that the pauper, by serving a year under it, did not gain a settlement.

one and the same time. I think, therefore, that this hiring was not sufficient to confer a settlement. The case of *Rex* v. *Martham* (*a*), is distinguishable from the present, because there was no such express authority as this to contract a relation of service with another master; besides, that was not a general contract of service, but to serve in the particular trade of a bricklayer. Upon the other point, I am also of opinion, that there is in this agreement an express exception as to part of the year.—HOLROYD J. I am of the same opinion. There was not a sufficient hiring and service to gain a settlement in *Stoke-upon-Trent*. Taking all the parts of the contract together, it seems to me an express agreement to serve only during the usual hours. The pauper does not engage to serve for more than that period; for he is to be paid for all over-work; and the master could not compel him, under this agreement, to serve more than that time. As to the other point, I had, at first, doubts whether it was sufficient to invalidate the settlement; but I am now satisfied that it is. The provision is, that the pauper should be at liberty to employ himself with any other master during the time of frost; and that, therefore, would impliedly give him a reasonable time, even after the frost was over, to finish the business he had so undertaken. Upon both these grounds I think the hiring was insufficient. — BEST J. I am of the same opinion on both grounds. The master does not, in this case, stipulate for an entire service during the whole year, but only for certain hours during each day; and that, according to *Rex* v. *Kingswinford* (*b*), invalidates the settlement. As to the other point, the case of *Rex* v. *Martham*, at first produced doubts upon my mind; but I am now quite satisfied, that that case is distinguishable from the present in the circumstance, that here the servant was at liberty to serve another master during the time of frost. As soon as the frost commenced, all control of the master over the servant would immediately cease. The decision of the Sessions was therefore right. — Order of Sessions confirmed.

(*a*) *Ante*, pl. 323.

(*b*) *Ante*, pl. 319.

The pauper was hired to serve as a servant in husbandry from *Michaelmas*, 1821, to *Michaelmas*, 1822, at weekly wages; and if he and his master could not agree for the harvest, he was to harvest for himself. Previously to the harvest, the master offered the pauper 5*l*. for the harvest, which he accepted, and continued in the service the whole year: Held, that this was an exceptive, and not a conditional hiring, and that no settlemen. was gained.

336. *Rex* v. *Althorne*, *T. T.* 4 *G.* 4. 2 *B.* & *C.* 112. — On an appeal against an order of two justices, for the removal of *Wiggins* and *Elizabeth* his wife, from *M.* to *A.*, the Sessions confirmed the order, subject, &c. "The pauper, who was settled in *A.* at "*Michaelmas* 1821, agreed with Mr. *C.*, a farmer in the parish of "*M.*, to live with him as his servant in husbandry, from that "*Michaelmas* till the *Michaelmas* following, at 10*s.* *per* week for "the winter half year, and 11*s.* *per* week for the summer; and if "he and his master could not agree for the harvest month, the "pauper was to harvest for himself where he pleased." Previous to the harvest, the master offered the pauper 5*l*. for the harvest, which he agreed to take; and, accordingly, continued in his master's service during the whole year. — PER CURIAM: The service would not have continued for the whole year, unless, after the original hiring, a new bargain had been made for the harvest month. There was not then any one hiring for a year; and, therefore, although the pauper actually served for a year, it was not such a service as confers a settlement. — Order confirmed.

337. *Rex* v. *Polesworth*, *E. T.* 5 *G.*4. 2 *B.* & *C.* 715. — Upon appeal, against an order of two justices, whereby *H. Brindley* was removed from *P.* to *St. P.*, *Derby*, the Sessions quashed the order, subject, &c. — The pauper derived her settlement from her father, *W. B.*, who being legally settled in the parish of *St. P.*'s, *Derby*, in *December* 1784, agreed with one *W. Boolows*, his uncle, then resident in the parish of *P.*, to serve him for three years, at 1*s. per* day, when he had work for him to do; and when he had not work for him he was not to be paid; *Boolows* told him at the same time he should not have work for him all the year round, particularly in the winter, and that when he had not work for him he might get work from other people. After making the agreement, *W. B.* went to work in the collieries, until the spring of the year 1785, and then went to work with his uncle, according to the agreement, and remained with him about nine months, when his uncle told him he had no employment for him, and he went and worked several weeks with a Mr. *Barrett*, of *P. H.*, as a labouring man, and after that, his uncle having again work, he returned to him, and continued to work for him about nine months longer, when he quitted him without his leave and went to *B.*, from whence he never returned to his service. He never received any wages from his uncle when he did no work for him, and never accounted with him for any wages he received from other people when absent from his service. — ABBOTT C. J. In this case the master tells the pauper at the time when he is hired, that he shall not have work for him all the year round, particularly in the winter, and when he had not work for him, he might get work from other people. This is merely a hiring for so much of the year as the master has work for him. He has the control over the servant so long as there is work for him. As soon as there is no work the servant ceases to be under the control of the master, and is at liberty to get work elsewhere. We are all of opinion that there was not any hiring for a year. — Order of Sessions quashed.

An agreement was made between *A* and *B* that the latter should serve for three years at 1*s. per* day when *B* had work to do, and when he had no work, *A* was not to be paid. At the time when the agreement was made, the master told the servant that he should not have work for him during the whole year, and particularly during the winter, and that when he had not work for him he might get work from other people: Held, that this was an exceptive hiring, and that the pauper having worked for other people during the winter season when his master had no work, and having at other times worked for his master during two successive years, did not gain a settlement.

338. *Rex* v. *Lydd*, *E. T.* 5 *G.*4. 2 *B.* & *C.* 754. — Upon appeal against an order of two justices for the removal of *G.*, his wife and children, from *L.* to *T.*, the Sessions quashed the order, subject, &c. — In the year 1810, the pauper gained a settlement by hiring and service in the parish of *T.* On the 26th or 27th of *August* 1819, the pauper, being then unmarried and having no child, was hired to Mr. *F.*, in the parish of *M.*, for three years, at 20*l. per annum*, as looker and to spud thistles. (The duty of a looker is to superintend the flocks and fences upon the lands of his employer, and he frequently has several masters, and works for any persons who may employ him, according as his time allows.) The pauper went into the service of Mr. *F.* on the 26th of *October*, and was married on that day. He served Mr. *F.* for three years. He did not work for any person but Mr. *F.* for the first year and three quarters of his service, but at the expiration of that time he hired himself as looker to a Mr. *R.* During his service with *F.* he did other work for him not belonging to his duty as looker, such as turning mould, lambing and shearing, for which he was always paid upon new and separate bargains on each occasion;

A pauper had been hired for three years at 20*l. per annum* as a looker. The duty of a looker is to superintend the flocks and fences of his employer. When he was hired, his master told him that he should not have full employment for him, but that he would employ him as much as he could. He was not to do

any work for his master, other than that belonging to the office of looker, without receiving extra wages. During the first year and three quarters he worked for his master only, but was always paid extra for any work not belonging to his office of looker: Held, that there was not any hiring for a year, and that the pauper did not gain a settlement by service under such a hiring.

and upon other occasions he did day-work as a labourer for *F.*, for which he was also paid by the day. At the time of the pauper's contract with *F.*, nothing was said about his being at liberty to hire himself to, or work for other masters during the three years, but *F.* said he did not think he should have full employment for the pauper; he would employ him as far as he could. Whilst he was working for other people, his wife hoisted a signal by putting a flag out of the window, upon which he considered himself bound to quit his work and attend to his duty as looker to *F.*, for which he was originally hired; and he invariably returned to *F.* when so summoned, and never worked on any lands from whence the flag could not be seen during the whole of the three years. He was not, however, to do any work for *F.*, other than that for which he was originally hired as a looker, without receiving extra wages. His agreement with *R.* was by the acre, and he bargained with him for a year at 14*l.* During the whole of the three years he lived on *F.*'s land at *M.* — ABBOTT C. J. I am of opinion that there was not in this case any contract of hiring and service for one whole year. Here the master had not the control over the servant for the entire year, but only for so much of the year as the duties of looker required his attention. At other times he was at liberty to employ himself in any manner he pleased, either in working for other persons or for his master, and when he worked for the latter he always received extra pay. — BAYLEY J. In order to gain a settlement by hiring and service there must be a contract for one whole year, and a service for the whole year. This is distinguishable from the cases cited, because here, from the very nature of the employment, it was not likely to fill up the whole time of the pauper. Scarcely ever more than a few hours each day would be required. It is very like the case of a person employed to attend as an occasional servant, for the purpose of brushing clothes. The master has no control over the servant as soon as he has performed the required service, and that takes up but a small portion of his time. — Order of Sessions quashed.

A master shoemaker made a proposal to a poor woman to take her son to learn his business, the son was to serve him for four years, to board and lodge with his mother, and to have half what he earned. No indentures *were executed on account of* the poverty of the mother: Held, that this was a defective contract of apprenticeship, and not a contract

339. *Rex* v. *St. Margaret's King's Lynn*, *M. T.* 7 *G.* 4. 6 *B.* & *C.* 97. — Two justices removed *J. C.*, *S.* his wife, and their five children, from *St. M.* to *W.* The Sessions on appeal quashed the order, subject, &c. It was proved that one *H.*, a shoemaker, a friend of the pauper's mother's family, applied to her, and offered, if she would agree to his proposal, that he would take her son, then a boy, to learn his business, but there were no indentures on account of her poverty. The pauper was to serve for four years, to board and lodge with his mother in *St. M.*, and to have half what he earned. The pauper entered upon this service, worked in the shop with the apprentices, did not stay with his master on a *Sunday*, and was not required to do any work but in the shop. The pauper continued in the service four years, boarding and lodging in *St. M.* Some time after entering upon the service, *H.* sent the following writing by the pauper to his mother, which was neither stamped nor signed: "An agreement "drawn up between Mrs. *C.* and *T. H.*, that the said *T. H.* is to "find her son *J. C.* work for four years, and he is to have half what "he earns all the four years; and Mrs. *C.* to find her son *J. C.* "every thing else during the four years." The Court of Quarter

Sessions considering the pauper gained a settlement by hiring, and service, quashed the order of removal. — BAYLEY J. I am of opinion that the contract between the parties in this case, was an imperfect contract of apprenticeship, and not a contract of hiring. Every case of this description must depend upon its own particular circumstances. If from all that passed between the parties at the time when the contract was made, they appear to have contemplated the relation of master and apprentice, then the contract must be considered to be one of apprenticeship, and if it be an imperfect apprenticeship, no settlement can be gained by serving under it. If, on the other hand, it appears that the parties contemplated the relation of master and servant, then it must be deemed a contract of hiring, and a settlement will be gained by serving under it. The payment of a premium is strong evidence to show that the parties contemplated an apprenticeship, but it is not decisive, and still less is the absence of a premium evidence to show that the parties contemplated a contract of hiring. In this case the written agreement must be laid out of consideration, because it was not signed, and had not the other requisites to make it binding on the parties. We must look to the original bargain between the master and the mother of the pauper, in order to ascertain the intention of the parties. The object held out by the master to the mother was, that he would teach the pauper his trade; the pauper was to serve four years, to board and lodge with his mother, and to have half what he earned. In ordinary cases indentures of apprenticeship are executed, but in this case they were not executed, on account of the poverty of the mother. Now, if the parties had contemplated the relation of master and servant only, the execution of indentures would never have been thought of. The fact stated in this case that indentures were not executed, only on account of the poverty of the mother, shows beyond all doubt that it was the intention of the parties to contract the relation of master and apprentice, and not that of master and servant. *Rex* v. *Little Bolton* (*a*), comes very near the present case; there the proposal was made by the pauper to a weaver, that he should teach the pauper to work counterpanes, but although the object of the pauper was to be taught, the master only agreed to teach him upon condition that the pauper would work for a given time. Now, in many instances the object of the party who hires himself, is to learn a particular trade, and the instruction he receives is a partial remuneration for his services. In *Rex* v. *Burbach* (*b*), the stipulation was, that the pauper should work for two years, and have what he got, allowing his master (*inter alia*) 2*s*. a week for teaching him the business; that was held to be a contract of hiring and service; but there was nothing in that case to show that the relation of master and apprentice was ever contemplated by the parties. Here it is manifest that a contract of apprenticeship was contemplated, and was not completed only in consequence of the poverty of the mother of the pauper. That being so, I think that this was an imperfect apprenticeship, and the order of Sessions must be quashed. — HOLROYD J. I am of opinion that the relation of master and apprentice was contemplated by the parties in this case, or, at least, that there is not sufficient ground to warrant us in concluding that the relation of master and

of hiring, and, consequently, that the pauper did not gain any settlement by serving under it.

(*a*) *Ante*, pl. 316.

(*b*) *Post*, pl. 518.

servant was contemplated by the parties. It appears that application was made by the master, who was a shoemaker, to the mother of the pauper, and he offered, if *she would agree to his proposal*, that he would take her son, then a boy, to learn his business. That was the subject of the application, and it was for the mother to consider whether she would consent to the proposal made to her. The terms upon which the master undertook to teach the pauper his business were, that the pauper should serve for four years. Now, for what purpose was he to serve for four years? To learn the business. I think that there was not sufficient in this case to warrant the Sessions in finding that the relation of master and servant subsisted between these parties. The fact of the pauper's having served the master did not warrant them in concluding that he served in the character of servant, and not of apprentice, for mere service does not constitute the relation of master and servant. — LITTLEDALE J. concurred — Order of Sessions quashed.

VI. *Of customary Hirings.*

The hiring must be for *a year*; and therefore a hiring from *May-day* to *Lady-day*, and from *Lady-day* to *May-day* is not good, although such hiring be the custom of the country.

340. *Horsham* v. *Shipley*, *M. T.* 12 *A. Fol.* 134. — *Crowley*, the 19th of *February* 1710, came from *S.* to *E.* in *H.*, and bargained with him to serve him till *May-tide*, for 1*s.* a week; and, at *May-tide*, he bargained to serve him till *Lady-day* next, for 26*s.* wages; and, at *Lady-day*, agreed to serve him till *May-tide* next, at 3*s.* a week; and, at *May-tide*, he agreed to serve him till *Lady-day* next for 26*s.*, and then till *May-tide* next at 3*s.*; and then he staid a fortnight at 1*s.* a week; and the question was, Whether this *C.* gained a settlement by this hiring and service? The Court of Sessions held he did; but THE COURT OF KING'S BENCH were of opinion that he did not; for they said the hiring and service must be for a year: and the order of Sessions was quashed.

A hiring from the 3d *October* to serve till the *Michaelmas* following, and then upon the request of the master, a continued service until the end of the year, is not a hiring for a year.

341. *Pepperharrow* v. *Frencham*, *M. T.* 1 *G.* 1. *Fol.* 135. — The pauper, *T.*, was hired on the 3d of *October* 1711, by one *M.*, of *S.*, in the parish of *P.*, to serve him from the said *third day of October* until *Michaelmas* then next, for 5*l.* 10*s.* wages. *T.* lived with *M.* till *Michaelmas* in the evening; and then, upon his master's request, he staid four or five days longer; and then received his 5*l.* 10*s.* wages. — THE COURT OF KING'S BENCH, upon consideration, were all of opinion, that this hiring was not sufficient to gain a settlement. (*a*)

S. C. Sett. & Rem. 80. 10 Mod. 293. Fort. 322. cited, 1 Str. 83.

A hiring at a statute-fair, held after *Martinmas*, to serve from that time to the *Martinmas* following, is not a hiring

342. *Rex* v. *Newton*, *M. T.* 14 *G.* 2. *Burr. S. C.* 157. — *A. G.*, the person removed, was, in the year 1733, on *Wednesday* after *Martinmas-day*, being the 14th day of *November*, and the day on which the first statutes for the public hiring of servants were held at *K.*, in the said riding, hired by *R. E.* of *N.*, to serve him from that day till *Martinmas-day* following. A fortnight after, in pursuance of that hiring, he went into the service of *E.*, and remained

(*a*) In the report of this case as cited in Rex *v.* Haughton, 1 Str. 83. it is said that the servant, at the master's request, staid so long after as *brought the year about*, but that it was held no settlement; and with this fact S. C. Fort. 322. S. C. 10 Mod. 293. agree; but Sett & Rem. 56. seems *contrà*.

there till some time in the *Spring* following, when, by accident, he became lame, and, by the master's consent, left the service for some weeks, and then returned and staid till the 10th day of *November* following, being the day before *Martinmas-day* 1734, on which day his master and he accounted, and he left his master's service. On the *Wednesday* following, he went to the first statutes at *K.*, where he contracted to serve one *J. H.* till *Martinmas* following, and received 2*s.* 6*d.* as earnest; but before he entered into his service, viz. on the *Sunday* following, *H.* sent him word "he was otherwise provided," and discharged him of his contract. The pauper, on the *Thursday* following, being the 21st day of *November*, went to *W.*, in the said riding, in which town two public statutes for the hiring of servants are, and, time out of mind, have been annually held; one on the first *Thursday* after *Martinmas*, and the other (commonly called the latter statutes, or latter club-day) on the second *Thursday* after *Martinmas-day*; and on the said latter club-day, being the said 21st day of *November*, was hired by *J. S.*, an inhabitant in *G.*, to serve till *Martinmas* then next. In pursuance of such hiring, he immediately entered into the service of the said *S.*, and served him till the *Martinmas-day* following, in the township of *G.* The Sessions were of opinion that *A. G.* did not gain any settlement in *G.* by the hiring with *S.*; but that he gained a settlement at *N.* by virtue of his hiring to and service with *E.*; and adjudged accordingly, that his last legal settlement was at *N.*; and confirmed the order of the two justices. — FAWKES moved to quash these orders, for that there was neither a hiring for a year, nor a service for a year; and they are both of them necessary; it has been several times so adjudged. — PAGE J. said, so it had; yet, he was afraid, most of the hirings at statutes throughout *England* were of this kind. Rule to show cause. — Upon showing cause, PROBYN J. observed, that the case does not state any custom about these statute-fairs. But he had a notion, that there had been cases where the custom and usage of the country had been stated, to hire from the statute-fair till *Martinmas* following; and that such hirings pursuant to the custom had been allowed of. — But MR. FAWKES alleged, that there were cases which adjudged that if there was such a custom, it could not control the act of parliament; and he particularly named one, viz. *Rex* v. *South Cerney*. (*a*) It was now adjourned. — On its coming on again, PAGE J. said, he believed great numbers of servants were hired in many countries only from the statute fair. — But LEE C. J. said, it could never be supported to be a settlement in *N.*, as there was neither a hiring for a year nor a service for a year. And, after having conferred with CHAPPLE and WRIGHT Js., the Court, without reading the order, or MR. DENNISON's attempting any argument against it, made the rule absolute for quashing both orders.

for a year, although such mode of hiring be the *custom* of the country. Cald. 19. 102.

343. *Rex* v. *Newstead*, *T. T.* 10 *G.* 3. *Burr. S. C.* 669. — *F. D.* hired herself, at *Whitsuntide* 1767, to *T. H.*, an inhabitant

A hiring from *Whitsuntide* to *Whitsuntide*,

(*a*) At North-Leach in Gloucestershire are annually held two *mops* or meetings for the hiring of servants; the one on the *Wednesday* before, and the other on *Wednesday* after *Michaelmas-day*. The pauper was hired on the *Wednesday* after *Michaelmas-day* to serve to the *Michaelmas* following; and held that he gained no settlement. Rex v. South Cerney, *post*, pl. 355.

such hiring being intended for a year, and so considered by the custom of the country, is a good hiring for *a year*, although it falls short of 365 days.

Cald. 101.

and housekeeper in the parish of *H. I.*, to serve him for a year, from the said *Whitsuntide* to the *Whitsuntide* following, at certain wages. She entered upon the service at *Whitsuntide* 1767, and continued there till *Whitsuntide* 1768, accordingly; when she received a year's wages from her master for such service. It hath been usual in this country, to hire servants from *Whitsuntide* to *Whitsuntide:* and a hiring and service from *Whitsuntide* to *Whitsuntide* has always, by the contracting parties, been deemed a year's service; and agreeable thereto, the master hath always paid the servant a full year's wages for such service, without any diminution thereof or addition thereto, and without making any distinction or difference, whether the space of time between the one *Whitsuntide* and the other consisted of more or less than 365 days. — THE COURT were unanimous that the pauper gained a settlement in *H. I.*, under this hiring and service. This is stated to be the usual way of hiring servants in this county, and such service always deemed to be a year's service. There are many of the clergy in *Durham:* they compute from ecclesiastical days. It is stated as a hiring to serve for a year, though it is indeed added, from *Whitsuntide* to *Whitsuntide*. Parish officers are, by *43 Eliz. c. 2.* to be appointed in *Easter-week*, or within one month after *Easter* (which is a moveable feast); yet they are considered as executing the office a whole year, though it may fall short of 365 days. There is no case that proves the absolute necessity that the hiring should be for exactly 365 days. (*a*)

A hiring from *Martinmas* to *Whitsuntide*, and from *Whitsuntide* to *Martinmas*, successively, is not sufficient, although it is the *customary hiring* of the place.

344. *Rex* v. *Lowther*, *H. T.* 11 *G.* 3. *Burr. S. C.* 674. — The pauper, *C. N.*, hired herself as a servant with one *W. T.* of *H.*, in the parish of *L.*, from *Whitsuntide* to *Martinmas;* and before the expiration of that term hired herself again to the said *T.* at *H.*, for the succeeding half year from the said *Martinmas* to the *Whitsuntide* following; and, in pursuance of these hirings, served *T.* at *H.* for the complete year, viz. from *Whitsuntide* to *Martinmas*, and from the said *Martinmas* to *Whitsuntide*, without leaving her service; and received the two half-year's wages. The usual custom of hiring servants in *C.* is from half-year to half-year. It has been the invariable practice of the Quarter Sessions of *C.*, as long as can be remembered, to adjudge the said hiring for two successive half-years, and service, in pursuance thereof, for one whole year with the same person, and in the same place, to be a settlement. — DAVENPORT argued, that here was no hiring for a year; and MR. WALLACE candidly acknowledged, that the order removing the pauper from *G. S.* to *L.* on this hiring and service, could not be supported, there being no hiring for a year, and the orders of removal were accordingly quashed. (*b*)

A hiring at a statute-fair, held the day after *Old Michaelmas day*, to serve till the *Old Michael-*

345. *Rex* v. *Navestock*, *M. T.* 13 *G.* 3. *MSS.* — The pauper, at *O.* statute-fair, did, on the day next after *Old Michaelmas-day*, *viz.* on the 11th day of *October* 1760, let himself to *S. P.* of *N.*, to serve until the *Michaelmas* following, old style, at the wages of 10*l.* He entered on the service, and continued in it until *Old Michaelmas-day* following; on which day he received his wages

(*a*) See, upon this point, the cases of Rex *v.* Newton, *ante*, pl. 242. Rex *v.* Navestock, as reported, Burr. S. C. 719. *post*, pl. 345. and Rex *v.* Harwood, *post*, pl. 347.

(*b*) Burr. S. C. No. 55. No. 165. and No. 209. 2 Salk. 535. Foley, 134. S. P.

and quitted the service: it appeared to be the custom and usage of the country to hire a servant at the statute-fair, *viz.* the day after *Old Michaelmas-day* in the manner in which this pauper was hired. — LORD MANSFIELD: There must be a hiring for a year. It has been determined that a hiring from a moveable feast to another feast is a sufficient hiring, being according to the custom of the country, although there should not be 365 days. (*a*) On the other hand, a hiring two days after *Michaelmas* to the next *Michaelmas*, has been determined no good hiring; and therefore the question is, Whether here was a hiring for a year? Great criticism has been made on the word *till*; it may or may not be exclusive, according to the subject-matter (*b*). How shall we construe it here? The custom is very material to explain it; the custom is to hire from the next day after *Michaelmas*. If this be wrong, there has been no settlement gained in this part of the country. How have the parties construed this hiring? It is certain they have construed it a hiring for a year. The servant did not want a place till the day after *Michaelmas*. His service did not end till then. The parties considered it as a hiring, including *Michaelmas-day*, for the pauper was actually in the service on *Michaelmas-day*. — ASTON. J. It appears that the pauper entered on the day after *Michaelmas-day*; "till" is the word relied on to prove it a hiring for less than a year. How has that word been understood? The pauper was in the service on the *Michaelmas-day*, and took his wages: the service explains the hiring; here is in effect a hiring for a year, and a service agreeable to it. — WILLES J. The custom of the country in such a doubtful case as this must be called in aid. — And it was accordingly determined by all the three judges to be a hiring for a year.

mas-day following, is a hiring for a year, sufficient for the purpose of settlement; for the days shall be taken *inclusively*.

S. C. Burr. 719. See Rex v. Syderstone, *post*, pl. 346., and Buller J.'s observations in Rex v. Harwood, *post*, pl. 347.

(*b*) See the case of Pugh v. The Duke of Leeds, Cowp. 714. and Powell on Powers, 484 to 528., where this point is fully examined.

346. *Rex* v. *Syderstone cum Bermer*, *E. T.* 17 *G.* 3. *Cald.* 19. — *C. D.* being legally hired, lived with *E. G.*, at *S.*, as a servant in husbandry, from *Michaelmas-day* 1769 until *Michaelmas-day* 1770. On *Old Michaelmas-day* 1771, one *J. C.* of *M.* came to the *Unicorn* in *M.*, and asked *D.* if he would live with him, and upon what terms. *D.* asked 8*l.* 8*s.*, which *C.* refused to give, but offered him 6*l.*, which *D.* refused to accept. Upon this they parted. On the next day (being the 11th of *October* 1771) between two and three o'clock in the afternoon, *C.* and *D.* were together at the *Royal Oak* in *M.*; when *C.* asked him, whether he would take the wages he had offered; which *D.* again refused; but, after some conversation, *D.* let himself to *C.*, as a servant in husbandry, until the *Michaelmas* following, for 7*l.* wages; and *D.* entered *C.*'s service on the evening of that day, being the 11th of *October*, and staid in his service until the 10th of *October* following, being *Michaelmas-day* 1772. On that day, *C.*, not having finished harvest, asked *D.* to stay and help him with his harvest; and though he thought himself at liberty to go, *D.* did stay with *C.* until the next day, being the 11th of *October*, at noon; and after he had dined, asked *C.* for his wages; whereupon *C.* paid him the said sum of 7*l.*, and *D.* quitted his service, and did not ask or receive any recompence for his additional service. On *Sunday* the 8th day of *October* 1775, *D.* was in company, at *W.*, with one *R. S.*, who was then employed as a

A hiring from the second day of one year *until* the first day of the next year, and service under it, gives a settlement.

S. C. Dougl. 441.

(*a*) Rex *v.* Newstead, *ante*, pl. 343. See Rex *v.* Ackley, *post*, pl. 349., and Rex. *v.* Ulverstone, *post*. pl. 350.

labourer by Mr. *R.*, a farmer at *B.*, in *N.* *S.* informed *D.*, that *R.* wanted a careful servant, and believed he could help him to the place. The pauper told *S.*, that he might learn his character of a person present (one *W. C.*); and *S.*, after making inquiry of *C.* concerning his character, told *D.* that if he would come to *B.* on *Michaelmas-day*, he would take care that he should have the place. *D.*, according to his promise then made, went to *B.* on *Michaelmas-day* being the 10th of *October* 1775, and enquired at *S.*'s house, whether Mr. *R.* was at home. *S.* told *D.*, that Mr. *R.* was gone to *N.*, but had desired that he (*D.*) would stay till his return. *D.* accordingly staid at a public-house at *B.* that night, and went to see his father at *W.* the next day; and returned to the public-house at *B.* that night. On the 11th of *October* 1775, Mr. *P.* of *W.* sent for *D.* to hire him. *D.* sent word to Mr. *P.*, that he should wait for *R.*'s place; but that if Mr. *R.* and he did not agree, he would wait on Mr. *P.* Mr. *R.* returned home in the evening of the 11th of *October*, and on the next morning, upon seeing *D.*, said to him, "So, you have stopt till my return!" and after some conversation about wages, (*D.* at first asked 9*l.* 9*s.*) he hired *D.* until the *Michaelmas* following for 8*l.* 8*s.*; and *D.* told the said *R.*, that he expected his service would expire at the *Michaelmas* then next, whereupon *R.* said, "With all my heart, "so long as you have stopt, it makes no difference; as I have not "often a servant who stays with me so short a time as a "year." *D.* staid in the service of *R.* at *B.* until *Michaelmas* last, when he married. In the course of the examination, *D.* was asked, whether *S.* was usually employed to hire servants for Mr. *R*; to which *D.* answered, he did not know he was. — LORD MANSFIELD: To be sure there must be a hiring for a year; and this is one. Though he was hired on the afternoon of the 11th, yet we shall say, that he was hired at 12 o'clock at night on the 10th; for it is settled, that the law will not allow a fraction of a day. He served till the tenth; that is, a year. If a man is born on the 10th he is of age on the ninth. — And the orders removing the pauper from *B.* to *S.* were quashed.

A hiring at a statute-fair held *three days after Martinmas* to serve till the *Martinmas* following, is not a hiring for a year, although such a hiring, according to the *custom of the country*, be considered a hiring for a year.

S. C. Dougl. 439.

See South Cerney *v.* Coultsbourn, *post*, pl. 355.

347. *Rex* v. *Harwood*, *T. T.*, 20 *G.* 3. *Cald.* 100. — *J. B.*, in the year 1774, being then a single man, and an inhabitant, as a servant in husbandry at *H.*, wanting again to hire himself as a servant in husbandry, offered himself at the *Statute Fair* at *H.*, where there is a custom for servants to hire at the *Statutes* day, on the last *Monday* in *Oct.*; but not meeting with a master there, he went to the market town of *O.* (about eight miles distant from *H.*), where there is a different custom for servants to hire by the year, at two different *Statutes*; one held on the *Friday* before *Old Martinmas-day*, the other on the *Friday* next after *Old Martinmas-day*; at which latter *Statutes Fair* they always hire till the *Old Martinmas-day* following, which by the custom is considered as a hiring for a year. *Old Martinmas-day*, in the year 1774, was on the *Tuesday*: on the *Friday* following, being the second *Statutes Fair* above mentioned, the pauper hired with *W. P.*, to serve his mother, *A. F.*, in *H.*, till the *Old Martinmas-day* following; and he did serve her in *H.* till the *Old Martinmas-day* following. — WILLES J. The question is, Whether a hiring for three days less than a year is a hiring for a year within the meaning of this act? The cases cited are against it; and one of

them, *Rex* v. *Newton* (*a*), is full in point even against any custom for less than a year having effect. As to the two cases relied upon on the other side (*b*), they do not contradict this doctrine: the first was a hiring from one moveable feast to another; the precise duration, therefore, of the service, might probably have not been in the knowledge of either party at the time of the contract; and it might have exceeded a year. In *Rex* v. *Navestock* (*c*), the hiring being TILL *Michaelmas*, the law, which makes no fraction of a day, included that day, by which the year was completed. — ASHHURST J. It appears very extraordinary to me, that an idea could be entertained, that a custom no older than King *William* could control an act of parliament. (*d*) The case of *Navestock* goes as far as it ought, and I should not choose to go further. — BULLER J. There is no case in which a hiring, which must necessarily be less than a year, has been adjudged to give a settlement; and it would be dangerous to make a new precedent of that sort. The question in *Rex* v. *Navestock* was, Whether, on a hiring from the day after *Michaelmas-day* till *Michaelmas-day*, that day should be holden inclusive or exclusive? A custom is only material to explain the terms of a contract when ambiguous. In that case, therefore, it was allowed to have its weight; but all the cases agree, that there must be a hiring for a year. — The orders, removing the pauper from *L.* to *H.*, were quashed.

(*a*) *Ante*, pl. 342.
(*b*) Rex v. Navestock, *ante*, pl. 345. Rex v. Newstead, *ante*, pl. 343.
(*c*) *Ante*, pl. 345.
(*d*) 3 W. & M. c. 11. § 7.

348. *Rex* v. *Skiplam*, *M. T.* 27 *G.* 3. 1 *T. R.* 490. — *W. W.*, the husband of the pauper, at *Old Martinmas* 1777, being then unmarried, hired himself for a year to one *R.* of *S.*, and actually served *R.* for a year at *S.*, pursuant to such hiring: on the next day after *Old Martinmas-day*, *to wit*, on the 23d of *Nov.* 1778, being then also unmarried, he hired himself to one *R. B.* of *N.*, to serve him from thenceforth *until* the *Old Martinmas-day* following; and he accordingly entered into the service of the said *R. B.* a few days after such hiring, and continued to serve him in *N.* aforesaid, pursuant thereto, until the *Old Martinmas-day* following, on which day, about 12 o'clock at noon, he received his full wages, and left his master's house in the evening of the same day. — ASHHURST J. It is much to be lamented that there is so much confusion in settlement cases; therefore, whatever the latest determination may be, they ought to be adhered to. Now the last case, namely, that of *Rex* v. *Syderstone cum Bermer* (*e*), seems to correspond with the present in every point. Before that a distinction had been made, as where the hiring and service had been expressly found to be for a year, according to the custom of the country. But in the last case no such distinction was taken: so here there is no custom stated; and "until" must be taken to be *inclusive*. Therefore there was a hiring and service for a year; for the pauper's husband entered into the service the first day of one year, and served till the first instant of the next. — BULLER J. The only question is, Whether *Martinmas-day* is to be taken *inclusive* or *exclusive*? The pauper's husband was hired the day after *Martinmas-day*, to serve *till* the *Martinmas-day* following. From the moment of the hiring he became the servant of his master, and continued in the service *till Michaelmas-day*. Then does the word *till* include the day? The former cases have decided that it does. And if it only included a *part* of the day,

A hiring and service from the *day after Old Martinmas* until the *Old Martinmas-day* following, is a hiring for a year.

(*e*) *Ante*, pl. 346.

as there is no fraction of a day, the service would be complete. — The orders, removing the pauper from *B.* to *S.* were quashed.

A hiring three days after *Michaelmas* till the *Michaelmas* following in leap-year, together with a service till the day after *Michaelmas-day*, making 365 days, will not gain a settlement; for this is not a *hiring for a year*.

349. *Rex* v. *Ackley*, *E. T.* 29 *G.* 3. 3 *T. R.* 250. — The pauper, being unmarried, on *Saturday*, 13th *Oct.* 1787, being three days after *Old Michaelmas-day*, which happened on a *Wednesday*, was hired to *T. C.* of *A.*, in the county of *O.*, to serve him until the next *Michaelmas*. He accordingly went into such service, and continued therein till *Saturday* the 11th of *Oct.* 1788, being the day after *Old Michaelmas-day* which (it being leap-year) happened on a *Friday*, and was paid his wages and went away. — THE COURT were clearly of opinion that here was no hiring for a year. It is stated that the pauper three days after *Michaelmas*, contracted to serve till the *Michaelmas* following; this was, therefore, a hiring for two days short of a year. And though this Court has been extremely indulgent in determining that *services* which have been, in point of fact, less than a year, shall be sufficient to confer a settlement, as where the pauper has been absent with leave, &c. yet they have been always strict in regard to the contract of *hiring*.

Under a hiring from *Whitsuntide* to *Whitsuntide*, a service of 365 days, though less than the period of the contract in the particular year, is sufficient to confer a settlement. (*a*) *Ante*, pl. 343.

350. *Rex* v. *Ulverstone*, *E. T.* 38 *G.* 3. 7 *T. R.* 564. — The pauper being legally settled in *U.*, was hired to one *M. H.* of *H.*, to serve from *Whitsuntide* 1796 to *Whitsuntide* 1797. She accordingly entered into his service on the *Saturday* after *Whitsunday*, being the 21st of *May* 1796, and continued to serve him in *H.* till the *Thursday* before the following *Whitsunday*, being the 1st of *June* 1797, when her master discharged her, she being pregnant of a bastard child, of which she was delivered on the first of *July* following. — BARROW in support of the order of Sessions, contended that as in *Newstead* v. *Holy Island* (*a*) a hiring from *Whitsuntide* to *Whitsuntide*, though less in the particular year than 365 days, was holden to be a sufficient hiring for a year to enable the pauper to gain a settlement; so where it appears to have been the intent of the parties that the hiring should be according to such ecclesiastical division of the year, the parties ought to be holden to the same term of service, in order to acquire a settlement, though it happened as in this case to be more than 365 days. But as the pauper was discharged for a legal cause before *Whitsuntide* happened again, she could not gain a settlement in *U.* — LORD KENYON C. J. The case is too plain for argument. The only question is, Whether a service for more than 365 days is not a service for a year? The term ecclesiastical year is altogether new, and was never before applied to this subject. — Order of Sessions quashed.

A statute fair being held yearly on the day after old *Michaelmas*, except when old *Michaelmas* falls on a *Saturday*, and then the fair being held on the *Monday*: Held, that a hiring from such *Mon-*

351. *Rex* v. *Standon*, *H. T.* 49 *G.* 3. 10 *East*, 576. — Removal from *O.* to *S.* Order confirmed, subject, &c. *O.* statute-fair is held yearly on the day after *Old Michaelmas*, except when *Old Michaelmas day* falls upon a *Saturday*, and then on the following *Monday*. At *O.* fair, 1806, held on a *Monday*, which was two days after *Old Michaelmas-day* in that year, the pauper was hired to serve *W. C.*, of *S. M.*, *from the fair day till the Old Michaelmas-day following*, and served accordingly. In support of the order of Sessions, *Rex* v. *Newstead* was cited. (*b*) — LORD ELLENBOROUGH C. J. There is a clear distinction between this case and that relied upon. There the hiring was from a moveable feast to the same moveable feast in the following year: here it is from

(*b*) *Ante*, pl. 343.

two days after *Old Michaelmas-day* to the *Old Michaelmas-day* following. The argument that this is a good hiring, because it is a hiring from fair-day to fair-day, is unsupported by the facts found by the Sessions; the hiring was neither from *Old Michaelmas-day* to *Old Michaelmas-day*, nor from fair-day to fair-day. The cases upon this subject have gone far enough; and it is necessary to look back to the statute, which requires a hiring for a year. If we allow these constructive hirings to go on, we shall soon have it contended that a servant acquires a settlement who is hired by the keeper of a boarding-school, from the breaking up at *Christmas* to the breaking up at *Christmas*, although less than a year should in fact be comprised in the period. — The other judges concurring, order of Sessions quashed.

day till old *Michaelmas-day* following, is not a yearly hiring under which a settlement can be gained.

352. *Rex* v. *Tyrley*, *T. T.* 2 *G.* 4. 4 *B.* & *A.* 624. — Two justices, by their order, removed *E. P.* and family from *A.* to *T.* The Sessions, upon appeal, confirmed the order, subject, &c. *P.*, the pauper, hired himself at 8*l.* and his washing, without any time being specified, but which the Sessions found to be a general hiring for a year. The pauper entered into his service the day before *New Year's-day*, and quitted, with the consent of his master, two days after *Christmas-day*, the usual time that servants, in that part of the county, go into and leave their places. The pauper received the whole of his wages at the time of his quitting, and stated, that when he left, he considered himself no longer under the control of his master. The Sessions confirmed the order, and found this to be a hiring and service for a year. — ABBOTT C. J.. As the Sessions have expressly found the fact of a hiring and service for a year, I think we are bound by it. I cannot say that no reasonable person could come to such a conclusion upon the facts stated, although I certainly should not have come to it myself. I should have thought, that, in this case, there was neither a dispensation with the service, nor a dissolution of the contract, but that the contract had arrived at its termination, and that before a year had expired. But still, as the question was properly for the determination of the Sessions, who have expressly found the fact otherwise, I think their order must be confirmed. — Order of Sessions confirmed.

A pauper having hired himself without specifying any time, entered into the service the day before *New-year's-day*, and quitted two days after *Christmas*, receiving his full wages; that being the usual time that servants in that part of the country go into and leave their places. The Court thought that this was a contract which had arrived at its termination before the expiration of a year; but the Sessions having expressly found it to be a hiring and service for a year, the Court considered themselves as bound by that finding.

VII. *Of retrospective Hiring.*

353. *Coombe* v. *Westwoodhey*, *H. T.* 5 *G.* 1. *Strange*, 143. — In 1715, *Michaelmas-day* happened to be of a *Thursday*. A man was hired upon the *Saturday* following, to serve from the said *Thursday after Michaelmas-day* to *Michaelmas* following. All this was stated for the opinion of the Court. And the first question was, Whether there was a complete hiring for a year? for if the word *said* be rejected, then there wants a week; but if you keep it in and refer it to *Michaelmas-day*, then by rejecting the words *after Michaelmas-day* it will stand as a hiring from one *Michaelmas* to another. — And EYRE J. thought it might well be so. — *Sed cæteri contrà*, for it would be to make it nonsense, in contracting to serve for a time past; whereas, if the word *said* be rejected, the rest is natural enough. — The other question was,

A *retrospective hiring*, as when *Michaelmas-day* was on a *Thursday*, and upon the *Saturday* following a man was hired "from the said *Thursday* after *Michaelmas-day* to *Michaelmas* following," is not a sufficient hiring. Cald. 101.

Whether (admitting the hiring be complete) there was any service for a year in pursuance of it as the statute requires, the contract being made upon the *Saturday?* — And EYRE J. said it might be intended he was those two days upon trial, and so the service would be sufficient. But the rest held, that such a service would signify nothing, for it is not in pursuance of any hiring; there must first be a hiring, and then a service, and not *vice versâ* a service, and then a hiring.

A hiring for a year proposed by the servant on *Michaelmas-day*, but not accepted by the master till three days after, is a *retrospective hiring*.

354. *Rex* v. *Westwell*, *T. T.* 3 *G.* 2. 1 *Bar. K. B.* 354. — *A.* was hired to live with *B.* from six weeks after *Michaelmas* to the *Michaelmas* following; and before his time was out he offered to live with *B.* for another year from that *Michaelmas-day*, if he would give him 4*l.* a year; but, that proposal not being agreed to, he went away on *Michaelmas-day; and three days after* the master agreed to give him the money, and then *A.* immediately entered upon the second service, and lived with *B.* till the *Michaelmas* following. — THE SESSIONS, upon an appeal from an order of two justices, adjudged *A.* to have got a good settlement by this service. — But THE COURT, on a rule being granted, made it absolute for quashing the order.

A *retrospective hiring*, though, according to the course and custom of the country, will not gain a settlement. S. C. 1. Sess. Cas. No. 156.

355. *South Cerney* v. *Coultsbourn*, *E. T.* 5 *G.* 2. EDITOR'*s MSS.* — Two justices removed *N. R.*, from *S. C.* to *C.*, both in the county of *G.* — The Sessions, on appeal, quashed the order, and stated the following case: In the parish of *N. L.*, in the county of *G.*, two mopps, or meetings, are held in every year for the sole purpose of hiring servants. The first mopp is held on the *Wednesday* preceding *Michaelmas-day*, and the other is held on the *Wednesday* after *Michaelmas-day*. The pauper, *N. R.*, was legally settled in the parish of *S. C.*; but after he had gained such settlement, and about six years before the present order of removal was made, he went into the parish of *N. L.*, to the mopp or meeting held as aforesaid, on the *Wednesday* next after *Michaelmas-day*, which said *Wednesday* in that year happened on the 5th day of *October*, when and where he was hired by one *R. W.*, for his mother *J. W.*, of *C.*, to serve her until the *Michaelmas-day* then next ensuing. On the *Michaelmas-day* next ensuing, the day on which he was thus hired, he desired to be discharged, and Mrs. *W.* accordingly paid him his wages as for the whole year, and he quitted her service. — STEVENS obtained a rule to show cause, why the order of Sessions should not be quashed; for that the hiring being for a year, according to the *custom of the country*, it ought to be taken under the custom a good hiring for a year. — PAGE and PROBYN Js. were clearly of opinion, that even if this mode of hiring had appeared upon the face of the order to be according to the custom of the place, yet it was impossible to permit any such custom to prevail, when contrary to the direct and express words of an act of parliament. The statute 3 *W.* & *M. c.* 11. § 6. requires a hiring for *a year;* but in this case there was not a hiring for a year; and whatever inclination the Court might feel to support a good custom, it was impossible to do it, either upon the facts stated in this order, or against the directions of the statute.

A *retrospective hiring*, as where a boy went upon

356. *Rex* v. *Ilam*, *M. T.* 25 *G.* 2. *Burr. S. C.* 304. — *R. P.*, of the parish of *I.*, hearing that the pauper was a likely boy to serve him as his postilion, sent to the pauper's father, to have the

pauper upon liking. After the pauper had served *P.* eight weeks on liking, *P.* hired him for a year, to commence from the beginning of the said eight weeks. He served *P.* in the parish of *I.*, including the eight weeks, a year and ten days, and no longer. — THE COURT, after a second argument, and taking time to consider of this case, which they held to differ from all the former cases, said, The whole question was, Whether there was a hiring for a year? It is agreed, that there must be a hiring for a year, and a service for a year, to gain a settlement, and that a retrospect will not do; which latter is the case here; for the lad came upon liking; and at that time there is nothing stated of a hiring until eight weeks after, during which eight weeks both parties were at liberty: and they held this to be no settlement. (*a*)

liking, and after eight weeks was expired, he was hired for a year, to commence from the beginning of the said eight weeks, and served only a year and 10 days, including the eight weeks, is not sufficient to gain a settlement.

357. *Rex* v. *Mursley*, *E. T.* 27 *G.* 3. 1 *T. R.* 694. — *W. C.*, the pauper, was born in the parish of *R.*; and *three days after Michaelmas* 1782, was hired by *J. P.*, in the parish of *M.*, to serve him in husbandry until the *Michaelmas following*: he served him the whole of that time, and received the whole of his wages: *J. P.*, at the time of hiring him, told him he should not belong to the parish of *M.* — THE SESSIONS stated that they were of opinion that all such transactions on the part of masters are fraudulent to prevent servants gaining settlements by virtue of their services, and adjudged that the pauper gained a settlement in *M.* by virtue of such hiring and service, and confirmed the order of justices by which the pauper and his wife were removed from *R.* to *M.* — ASHHURST J. This is a very clear case: it is stated as a naked fact, that the pauper was hired three days after *Michaelmas*. It does not appear to have been a concerted scheme between the parties to prevent the pauper's gaining a settlement; for *non constat* that they ever saw each other till the actual time of hiring, which was three days after *Michaelmas*. This, therefore, cannot be taken to be a hiring for a year. — BULLER J. There must be, by some means or other, a hiring for a year, and a service for a year, in order to give the servant a settlement. The question of fraud only arises where in truth there is such a hiring, but the parties endeavour to colour it in order to prevent the pauper's gaining a settlement. In such case the Court may say it is fraudulent. For suppose the master had hired the servant three days after *Michaelmas* to serve till the *Michaelmas* following, and

A hiring three days after *Michaelmas*, to serve in husbandry UNTIL the *Michaelmas* following, is a *retrospective hiring*, and a service under it will not gain a settlement.

Rex *v.* Milwich, *ante*, pl. 306.

(*a*) In the case of Rex *v.* Hoddesdon, E. T. 17 G. 3. the pauper four days after *Michaelmas-day*, went to *Hoddesdon* to inquire after a place at Mr. *Veares*, but was told by his sister that she believed she should not keep a maid at all. The pauper on this went back to *Cheshunt*; but the carrier called on her the day following, and told her that she might come if Mr. *Veares* and she could agree. She then went back, and staid about three weeks or a month upon liking, without any term being talked of; when her aunt came, and *Veares* hired her for a whole year, at the wages of 14*l.* *to commence from the day she first came to the service.* She staid in the service until the day after the *Michaelmas-day* following, when her mistress paid her her whole year's wages, and she then quitted the service with her own and her master's consent, and went back to *Cheshunt*. The question was given up on the authority of the above case of Rex *v.* Ilam, by Mr. *Wallace*, who said it was impossible after that decision to maintain that a *retrospective hiring* was good; and the Court said that he surely could not. S. C. Cald. 23; and upon similar facts, the same admission was made by Mr. *Bearcroft* in the case of Rex *v.* Marton, E. T. 31 G. 3. 4 T. R. 257.

had agreed with the servant that he should give in three days after the expiration of that time, that would be construed to be a hiring and service for a year. But the master may, if he please, hire a servant for a less time than a year, for the express purpose of preventing his gaining a settlement. — GROSE J. If the opinion of the Court of Sessions amount to any thing, it goes the length of saying, that all hirings for less than a year are fraudulent. It must be admitted, that a master may hire a servant for six months only; and the same reason will equally permit him to hire a servant for a year short of three days.

VIII. *Conditional Hiring.*

A conditional hiring, as for a quarter of a year, and if the master and servant liked one another, to continue for a year, is, if service for a year ensues, a good hiring to gain a settlement.

S. C. 2 Str. 950. 1 Sess. Cas. p. 211. Burr. Sett. Cas. p. 1.

358. *Rex* v. *Lidney*, *T. T.* 6 & 7 *G.* 2. EDITOR's *MSS.* — Two justices removed *M. B.*, single woman, from the parish of *S.* to *L.* The Sessions, on appeal, confirmed the order, and stated the following case: The pauper, *M. B.*, about three years before the order of removal was made, went to *S.* and there hired herself to one *W. W.*, an inhabitant of the parish, upon the following terms, *viz.* she agreed to live as a servant with the said *W. W.* for a quarter of a year, and if he and she liked one another, that then she would continue his servant for the remainder of the year. The wages agreed for were 3*l.* a year. The pauper entered into the service under this hiring, continued with her master one whole year, and received at the year's end her 3*l.* as the wages for the year. — YEATES obtained a rule to show cause why these orders should not be quashed, and contended, on showing cause, on the authority of *Rex* v. *Soleberry*, that the statute of 3 *W.* & *M. c.* 11. is to be construed in favour of settlements, because it restrained that right which every person possessed at common law to claim a settlement by virtue of inhabitancy, and he cited to this effect the cases of *South Sydenham* v. *Lamerton* (*a*) and *Rex* v. *Aynhoe*. (*b*) The contract in the principal case, though made with caution, evidently includes a year, as appears from the circumstance of the wages. The service under the first quarter may be thought distinguishable from the rest, because for that time the contract was absolute and binding on both parties, and that after its expiration it was in the election of either party to determine the contract; but as neither of the parties determined it, and it, in fact, continued for the year, it must be taken that each of them assented to its continuance, and then that implied assent will have relation back to the time of the first hiring, and form an executed contract of hiring and service for a whole year, which is all that is required by the statute to gain this species of settlement. — STEVENS, on the other side, contended, that this hiring and service did not gain a settlement. — But LEE C. J., and PAGE and PROBYN Js. were of opinion that the pauper had, by this hiring and service, gained a good settlement; for although the hiring was originally conditional, yet the condition being performed by the continuance of the relation, the contract shall be taken as if absolute, and as if the condition had never existed: it is clear, that the master and the servant did like one another; it is clear, from the payment of the year's wages, that if this happened the contract was to be for a year; and therefore the service under it gains a settlement. — The rule for quashing the orders was accordingly made absolute.

(*a*) *Ante*, pl. 193.
(*b*) *Post*, pl. 368.

359. *Rex* v. *New Windsor*, *H. T.* 8 *G.* 2. *Burr. S. C.* 19. — The pauper was hired to serve Colonel *M.*, at *T.*, and was to go into his service a month upon liking, and to have *5l.* a year wages; but was to go away on a month's wages or a month's warning, to be at any time paid or given on either side by the said master or servant. She continued in her service near two years without any other hiring, and received her wages quarterly; and at the time she was hired her settlement was in *N. W.* — LORD HARDWICKE. The question upon the merits of this case is, Whether the fact, as stated, be evidence of a hiring for a year? for if it be, we must adjudge upon the same evidence: I think it is; or else you would overturn most of the settlements in *England* upon hirings in gentlemen's services. I believe the ordinary way of hiring is at so much a year, and a month's wages or a month's warning on either side. I think it is reasonable, that the having *5l.* a year wages should be understood as meant to fix for how long a time the service was to be, unless sooner determined. And I do not think the limitation of its being to cease upon a month's wages or a month's warning on either side will have any effect; for that is the common method. It is expressly stated, that she continued in her said service near two years; and her coming upon liking for a month does not alter the case at all. As to the limitations of a month's wages or a month's warning, the case of *Lidney* v. *Stroude* is a strong case; for that service might have been determined at any time. — PAGE J. I am of the same opinion. I think, the having *5l.* a year wages shows that it was a hiring for a year: It is defeasible indeed; but so is an absolute and express hiring for a year, wherever there is a power to determine it sooner. — PROBYN J. The natural construction is, that it is a hiring for a year at *5l.* wages: and it is tantamount to saying, that she was hired for a year, at *5l.* a year wages. The rest is matter which is to go in defeasance of the contract. But notwithstanding those eventual limitations, the service actually subsisted for near two years. They might have avoided the contract; but they have not. — LEE J. was of the same opinion, that upon the face of this special order, it appeared that she was legally settled at *T.*; for it is stated, that she was hired to Colonel *M.* at *T.* Now a general hiring is a hiring for a year. Then it is stated, that she was to have *5l.* a year wages. The contract depends upon the first hiring. The parties had it indeed in their power to avoid the contract; but they have not done so. The reason of making a hiring for a year requisite, is the credit of the person thought worthy to serve for a year; and here it is as strong; for, after trial, the master let the service go on for near two years. Therefore the words and intention of the act are complied with in this case.

An agreement to go one month upon liking, at *5l.* a year, with liberty to leave the service on a month's wages, or a month's warning, on either side, is a good *conditional hiring*; and a service for a year under it will gain a settlement.

Ante, pl. 358. and see Rex v. Birdbrooke, *ante*, pl. 320.

360. *Rex* v. *Atherton*, *H. T.* 16 *G.* 2. *Burr. S. C.* — *R. H.*, being unmarried, and not having any child or children, and being legally settled in *A.*, was, in the year 1729, hired by *T. B.*, an inhabitant of, and legally settled in *B.*, for one year, at *4l.* wages, payable quarterly. And it was agreed between the said *B.* and *H.*, at the time of the said hiring, "that either the said master or "servant should be loose from or at liberty to determine the said "contract or hiring at the end of any quarter of the said year; "either of them giving a month's notice to the other." But it

A hiring for a year, at *4l.* a year, payable quarterly, with liberty on either side to determine the contract at the end of any quarter, on a month's notice, is, if no

such notice be given, a good *conditional hiring* for a year.

appeared that no notice of dissolving or determining the said hiring or service was ever given by either the master or the servant; and that *H.* continued in his master's service in *B.* the whole year. It also appeared that *H.*, at the time of the hiring, declared, that the reason of the hiring being made determinable at the end of any quarter upon such notice was, "that he would "not be hired so as to lose his former settlement."—THE COURT, on the authority of the cases of *Lidney* v. *Stroude* (*a*), and *Rex* v. *New Windsor* (*b*), held it to be a good settlement at *B.*

(*a*) *Ante*, pl. 358.

(*b*) *Ante*, pl. 359.

An agreement that a servant shall come for a quarter of a year at the rate of 20*s.* a year, and if he and his master liked each other, to continue, is, if the service continue, a good conditional hiring.

361. *Rex* v. *St. Ebb's*, *H. T.* 22 *G.* 2. *Burr. S. C.* 289.—*C. G.* went to *H.*, otherwise *St. C.*, to be hired to *T. W.*, who lived in and was an inhabitant of the said parish of *H.*; and being asked, What he would give? he said, he would not give him more than he gave to his former boy, which was 20*s.* a year. He was then hired in this manner: he was to come for a quarter of a year, and to have after the rate of 20*s.* a year; and if he and his master liked each other, was to continue on. He continued a year and a half over and above the said quarter, without any further or other hiring, and received his wages as he had occasion for the same.—MR. NARES moved to quash these orders; for a conditional hiring is a hiring for a year, provided the condition be performed. *Rex* v. *Lidney* (*c*), and *Rex* v. *New Windsor* (*d*), accordingly. (*e*) So that, upon the whole, the settlement is in *H.*, and not in *St. E.*—A rule to show cause was granted, and made absolute, no cause being shown. (*g*)

(*c*) *Ante*, pl. 358.

(*d*) *Ante*, pl. 359.

A pauper was, by indenture, hired for a year as a driver in a colliery, at the wages of 1*s.* 10*d.* for a good day's work, not exceeding 14 hours, and 2*d.* a day more when that time was exceeded; and he was to forfeit 10*s.* 6*d.* for every act of disobedience, and 2*s.* 6*d.* *per* day for lying idle (to be deducted out of his wages). There was a *proviso*, that nothing in the indenture should be construed to oust the jurisdiction of the justices, or to prevent either master or servant from applying to

362. *Rex* v. *Byker*, *T. T.* 4 *G.* 4. 2 *B.* & *C.* 114.—Upon an appeal against an order of two justices for the county of *D.*, for the removal of *W. G.* and *M.* his wife, from the township of *H.*, in the said county of *D.*, to the township of *B.*, in the county of *N.*, the Court of Quarter Sessions at *D.* confirmed the order, subject to the opinion of this Court, upon the following case. By an indenture, bearing date the 23d day of *October* 1809, and purporting to be made between *J. P.* of *B.*, in *N.*, of the one part, and the several persons whose names or marks were thereunto subscribed, of the other part, the said *J. P.* did hire and retain the several other parties thereto, and they did hire and bind themselves as workmen or servants, to be employed in a certain colliery for the term of a whole year, from the 21st day of *January* 1810, and to serve *J. P.* in the colliery for certain hire or wages in the indenture mentioned; and *J. P.* did covenant to pay to every driver, for every good and sufficient day's work, not exceeding 14 hours, in single-shaft pits, (and 2*d.* *per* day when that time was exceeded,) 1*s.* 10*d.* And the several persons hired and retained by the indenture did covenant with *J. P.* that each of them would, in their several stations, diligently perform and obey his orders and directions as to the manner of working the colliery, and work the colliery fairly and regularly, and as therein further expressed; or in default thereof, should forfeit and lose (to be retained out of their wages) the sum of 10*s.* 6*d.* for every act of disobedience; and also the sum of 2*s.* 6*d.* *per* day for lying idle upon each hewer, deputy-craneman, on-setter, sinker, driver, or off-handman, to be deducted as aforesaid; and for every working-day which they or any of them so hired and bound as aforesaid

(*e*) See also Rex v. Atherton, *ante*, pl. 360.

(*g*) *Vide* Burr. S. C. No. 102. Rex v. Ilam, *ante*, pl. 356.

should absent themselves from their employment, or should neglect or refuse to fulfil and execute the whole of the business of an usual day's work, unless prevented by sickness or some other unavoidable cause, the defaulters should forfeit and lose (to be retained as aforesaid) the sum of 2*s.* 6*d.* for every such default, refusal, or neglect; all which said forfeitures and penalties should be deducted and retained out of the wages or earnings of each offender at the first pay day next after the offence should be committed. And in the said indenture was contained a proviso, that the indenture should not, nor should any covenant or clause therein contained, be construed to extend to oust or exclude any justices of the peace from any jurisdiction or cognizance which the statute law of this kingdom hath given to such justices over masters and servants; but, on the contrary, that each of the said several parties thereto should be at full liberty, notwithstanding any thing therein contained, upon any breach of any of the before-mentioned covenants, to call for and require the aid and assistance of any justice or justices, to compel the performance, or punish any breach of such covenants, as far as by law they could or might if the said indenture had not been made. And it was further covenanted and agreed, that in case the said *J. P.* should think it necessary, at or about *Christmas* 1822, to repair, alter, or amend any engines or machines of or belonging to the said colliery, or to remove or prevent any obstructions or hindrance which might have happened to the same, or to do any other thing which he the said *J. P.*, his executors, &c. should think needful to be done in the said colliery, or the working of the same; that then it should be lawful for him to stop the workings at all or any of the pits of the colliery for any length of time not exceeding in the whole the space of seven days, without paying or allowing any wages or sums of money to any of the several parties who should thereby be prevented from doing their daily work, save and except such of them as should be employed by him in any other work in and about the colliery, or otherwise, who should be paid or allowed reasonable wages for such his or their other work. This indenture was executed by *J. P.* and by *W. G.* the pauper, together with a great number of other workmen, upon the day it bears date. *W. G.* was retained and hired by the said indenture as a driver. He was at that time under age, unmarried, and without any child. At the time when the indenture was executed *W. G.* was in the service of *J. P.*, at the colliery, and he continued in his service as a driver for a whole year, from the 21st of *January* 1810 till the 21st of *January* 1811, and resided during all that year in the township of *B.* There was no evidence, either that the pauper, *W. G.*, had or had not incurred any penalty or forfeiture during his year's service under the indenture, or that any deduction had or had not been made from his wages. — BAYLEY J. The question in this case was, whether the hiring were conditional or exceptive. Many cases of this description are to be found in the books, between which the distinction is rather subtle, and at first sight not easily discovered. Adverting to them all, the proper distinction appears to be this; if the bargain be originally made for an entire year, and terms are introduced applicable to a continuance of the relation of master and servant during the whole year, but there is also a provision, that in a given event it shall

them in case of disputes; and a covenant, that in case the master about *Christmas* should wish to repair any engine, &c., belonging to the colliery, he might stop the workings for any period not exceeding seven days, without paying any wages to the pauper, unless employed in other work: Held, that this was a conditional, and not an exceptive contract, and that the pauper gained a settlement by serving under it for the whole year.

be competent to the parties to put an end to, or suspend the service for a part of the year, still a settlement is gained if the service is actually performed for a whole year, and neither party avails himself of the condition. A conditional hiring is, for this purpose, the same as an absolute hiring, unless the condition is acted upon. An exceptive hiring is one by which the relation of master and servant will not subsist for the whole year, unless some further arrangement is entered into; and if by the bargain days or hours are excluded from the service, that is an exceptive hiring. It has been contended that here both days and hours are excluded, but we are of a different opinion. The pauper was hired by indenture, and it was agreed that the master should pay for every good day's work, not exceeding 14 hours, (and 2*d.* *per* day when that time was exceeded,) 1*s.* 10*d.* It was said that the pauper was entitled to absent himself at the expiration of 14 hours, and that the master could not compel him to work any longer. We are of opinion, that the time was only mentioned as the measure of the wages; that the contract does not impose any limit upon what might reasonably be required by the master; and that the relation of master and servant continued during the whole 24 hours. Upon the forfeitures, also, we think that the pauper might not, upon payment of them, be absent if he thought fit, but that they were inserted to enforce regular attendance; and this view of it is confirmed by the clause stipulating that nothing in the contract shall be construed to abridge the power of the magistrates. Another clause has been insisted upon for the appellants; that relating to the repair of the engine. If that was an exception, this was a contract for a year, *minus* seven days. But we think it a contract for a year, with power to the master to stop the work if he thought fit. Had he done so, the question would have been different; but that is not found. This, therefore, was a bargain for a year, with liberty to suspend the service, which constitutes a conditional and not an exceptive hiring. This distinction between conditions and exceptions is consistent with all the decisions. In the cases where a servant having liberty to be absent, has been held not entitled to a settlement, it will be found, either that the servant availed himself of the liberty, or that the time was necessarily excepted out of the original contract. This being a conditional hiring, and the condition not having been acted upon, the pauper gained a settlement in *B.* And the order of Sessions was therefore right. — Order confirmed.

IX. *Of several Hirings.*

A service for a year, though under different hirings, is good, if one of the hirings be for a year.

S. C. Fort. 316. Sett. & Rem. 255. 3 Salk. 257. 12 Mod. 224. but in all of them very inac-

363. *Rex* v. *Overton*, *H. T.* 10 *W.* 3. *Burr. S. C.* 549. — The pauper, *B. B.* was settled in *O.*; and on the 25th day of *March* contracted with one *J. O.*, of the parish of *S.*, for the wages of 1*l.* to serve him from the said 25th day of *March* 1697, until *Michaelmas* then next following; and which time she served accordingly. At *Michaelmas*, *J. O.* contracted with her from the said *Michaelmas* for *one year* ensuing, for the wages of 1*l.* 10*s.*; and she remained with him until some time in the month of *April* 1698; in which month, by mutual consent, she left her service; and he paid her the proportion of her wages that were then due. — THE SESSIONS conceived that the pauper, by continuing more than one

whole year under this hiring, gained a settlement in the parish of *S.*— And THE COURT of King's Bench were of the same opinion; for the service under the hiring for half a year, and the half a year's service under the hiring for the year, answers the end of the statute 8 & 9 *W.* 3. *c.* 30. and is a good service for the year (*a*).

curately reported. See Burr. S. C. 550.

364. *Dunsford* v. *Ridgwick*, *M. T.* 9 *Ann. Salk.* 535. — The pauper was hired as a servant to live at *R.* for *half a year*, and after that was hired again to live there for *another half year*, with the same person, and thereupon served a year in one continued entire service, but by several hirings.— PER CURIAM: It ought to be one entire contract, and one entire service; the one is required by the statute as well as the other. If a service under several contracts shall gain a settlement, one who serves by the month, by the week, or by the day, may, if he continue a year, gain a settlement; one may hire by the day for charity; but there is danger of being chargeable in hiring such a person by the year: for such a term as a year it is not supposed a master would hire one, unless able of body, and so a person not likely to become chargeable. — Also the CHIEF JUSTICE observed, that by the statute of *Eliz.* the retainer of servants was for a year; that 14 *Car.* 2. requires 40 days' stay, but that this was inconvenient; for by gaining a settlement in 40 days servants grew insolent; and that the latter acts, *viz.* 3 & 4 *W.* 3. *c.* 11. and 8 & 9 *W.* 3. *c.* 30. do but turn the 40 days' service into a year's service, and the hiring to be a retainer for a year, according to the statute of *Eliz.*

The hiring for *a year* must be by one entire contract; for two successive hirings for *half a year* each, is not sufficient. See Rex *v.* Lowther, *ante*, pl. 344.

365. *Wichford* v. *Bretford*, *Lent Assizes*, *Salisbury*, 11 *Ann. Fort.* 311.— A person, five days after *Michaelmas* 1709, was hired to *B.* from the said five days after *Michaelmas* 1709 to *Michaelmas* 1710. On *Michaelmas-day* 1710 he departed from his master's service, and was paid his wages to that time. On the next day after his departure (*b*) he returned, and covenanted with his said master to serve him there for another year; but a month or five weeks before the end of the last year, he departed from the service, and the master deducted out of the last year's wages 8*s.* for the month or five weeks that was wanting of the year. — POWIS, Judge of Assize, held this to be no settlement, because here was no hiring for an entire year, nor service for a year pursuant to the hiring.

The service under a hiring from five days after *Michaelmas* to the *Michaelmas* following, and a departure on *Michaelmas-day*, cannot be coupled with a service under a new hiring for *a year*, made by the same master the *day after* the servant's departure.

366. *Brightwell* v. *Westhalley*, *E. T.* 1 *G.* 1. EDITOR'S *MSS.* — The pauper, *J. S.*, was hired to serve from three weeks after *Michaelmas* to the *Michaelmas* then next ensuing, which time he regularly served. On the ensuing *Michaelmas* he was hired again by the same master into the same place, to serve him for *a year*; but under this second hiring he only served for 11 months. — THE COURT: By the statute of the 3 *W.* & *M.* *c.* 11. a hiring for *a year*, and a service of only 40 *days* under it, was sufficient for the purpose of gaining a settlement; but by the 8 & 9 *W.* 3. *c.* 30. the service must be during the space of one whole year. Now it appears from the facts of the present case, that the words of this last statute are satisfied, for there was a hiring for a year, and a

A service on a hiring from three weeks after *Michaelmas* to *Michaelmas*, may be joined to a service of 11 months under a new hiring for *a year*. S. C. Foley, 143. 1 Sess. Cas. 92. 10 Mod. 198.

(*a*) Same point precisely determined in the case of Rex *v.* South Moulton, Lord Ray. 426; a case the records of which cannot be found, but which, *Burrows* says, may possibly be the same case as Rex *v.* Overton. See Burr. S. C. 550.

(*b*) See Rex *v.* Ellisfield, *post*, pl. 375.

Andrews, 63. See 5 T. R. 100.

service for a whole year; and although that service was not under the hiring for a year, yet as the service was never discontinued, we think upon the authority of *Overton* v. *Steventon* (*a*), and upon considering the intent of the legislature in the framing of the former statutes upon this subject, that the latter statute is answered, and that the pauper gained a settlement by this hiring and service.

(*a*) *Ante*, pl. 363.

Distinct and separate hirings for 11 months each cannot be connected so as to form a hiring for a year. S. C. Foley, 137. 10 Mod. 392. Cald. 133.

367. *Rex* v. *Haughton*, *H. T.* 4 *G.* 1. *Str.* 83. — *J. E.*, about five years before the removal, was hired with *R. T.*, of *H.*, from *Ash-Wednesday* until *Christmas*, and served him that time. He then went away from him, and staid with his father in *R.* for about a week. He then returned to *R. T.*, and was again hired with him for 11 months, and served him the said 11 months. He then departed from *T.*, and took his clothes with him, and was absent one week. He then returned to *T.*, and was hired with him for 11 months, and accordingly served him, and then left that service, and went to his father in *R.*, and staid about one week. *E.* then served one *J. S.*, of the parish of *H.*, for about three weeks. He then returned to *R.*, where he staid for above a week, and then returned to *J. S.* to *H.*, and hired himself for 11 months; and did accordingly serve within a fortnight or three weeks of the last 11 months, when, by agreement with *S.*, to avoid a settlement in *H.*, he left him, took his clothes, and went into the parish of *G.*, and there continued about a week. *E.* then returned to *J. S.*, and continued with him so long as to make up his service of the last 11 months. Three weeks before *Christmas*, *E.* hired himself again to *S.* for another 11 months, and served him from that time till within three weeks of *Michaelmas* following, and then came away, and married. — THE CHIEF JUSTICE: This is plainly a design to save this parish, and I suppose all the parishioners have agreed never to hire any servant for a year. The ground of the statute relating to servants was, that a person who had strength of body enough to hire himself out for a year, would, when that year expired, be able to support himself; and the same reason holds in the case of apprentices. I am afraid we cannot interpose in this case; but it is proper the legislature should. — PRATT J. We must take the law as it stands, and follow former resolutions; for the Sessions have ever since for the most part acted pursuant to those resolutions; and if we should do otherwise, it will introduce the utmost uncertainty and confusion; and little respect will be paid to our judgments, if we overthrow that one day which we resolved the day before. The statute expressly requires a hiring and service for a year; and it is admitted that if there was but one hiring and service for 11 months, that would give no settlement; and why any subsequent hirings of the same nature should gain him one I cannot imagine. The reason of hiring servants at first for 11 months only is, because the servant may prove idle and good for nothing, and the master, as a prudent man ought to do, avoids bringing a charge upon the parish till he has had experience of the diligence and fidelity of his servant; and when he has had 11 months' experience of his diligence and fidelity, then, if he hires him a second time, that is grounded upon his good service during the former hiring; but still the second hiring must be as full as if the first hiring were out of the case. And if the first hiring were out of the case, then the second would stand in the

Rex v. Ivinghoe, *post*, pl. 414.

same parity of reason with that I mentioned before, a single hiring and service for 11 months, which it is agreed will give no settlement. If there was any fraud, the justices should have examined into it. We cannot judge of the fact, but the law upon the fact. (*a*) Demand and refusal is evidence of a conversion to a jury, but not to the Court. (*b*) If the case of the parishes of *Overton* and *Steventon* (*c*) was open again, I should not readily go into that opinion. — THE COURT took time to consider of it, and at the end of the term they held, that, as the law now stands, the several hirings and services that were stated could give no settlement. They said, it would be dangerous to depart from the words of the statute, and if they once did, they should never know where to stop. (*d*)

(*a*) 1 Ven. 310.
(*b*) 1 Roll. Abr. 523. 10 Co. 56. Hob. 187. 1 Ven. 401. 1 Sid. 127. Hutt. 10. Salk. 531.
(*c*) *Ante*, pl. 363.

A service under a hiring from *Christmas* to *Michaelmas* may be joined to a service from *Michaelmas* to *Christmas*, under a successive hiring for a year.

S. C. 2 Sess. Cases, 119. S. C. Foley, 144. Cald. 180. notis.

368. *Rex* v. *Aynhoe*, *M. T.* 1 *G.* 2. *MSS.* — A parishioner of *A.* was hired into the parish of *B.* from *Christmas* to *Michaelmas*, and served accordingly, and at the said *Michaelmas* was hired again by the said master for a year, but served only till *Midsummer* following: the question was, Whether these services gained a settlement at *B.*? — PRIME argued, that the service must be one entire service in pursuance of the hiring, by the statute of *W.* 3., by which it is directed, that no such person so hired for a year shall be adjudged to have a settlement, unless he abide in the same service during one whole year; whereas this man has continued but three quarters of a year in *the same service*, after the hiring for a year: the statute requires one entire contract, and one entire service, as was determined in the case of *Dunsford* v. *Ridgwick*. (*e*) — LEE, on the other part, insisted, that the statutes do not require that the service should be in pursuance of one entire contract or hiring; and that, therefore, as there was in this case a hiring and continuance in the same service for a whole year, the words of the statute were fully satisfied. He mentioned the case of *South Sydenham* v. *Lamerton* (*g*); in determining which, he observed, that *Eyre* J. took notice, that a hiring for a year, and a service for a year, though the service was on different contracts, would gain a settlement; and that *Parker* C. J. said, that it was so, because the parish had the benefit of his labour so long; and for this further reason also, that by serving so long he had done what amounted to a notice in writing. — LEE mentioned also the case of *Ivinghoe* v. *Solebury*. (*h*) — But LORD RAYMOND C. J. said, That seemed a very extraordinary case, and must be understood, that the farmer lent his servant to the assignee, and that the contract still continued betwixt the farmer and the servant, so that the servant might have demanded all his wages of the farmer, notwithstanding the assignee had engaged to pay half; and it was agreed, that this was the reason on which the Court determined that case. I do not see, continued the CHIEF JUSTICE, why the statutes are to be construed in favour of settlements, when such construction may do a prejudice to other people, and no service to the pauper, who certainly is no vagrant, but has a settlement somewhere. By the statute, there should be a hiring for a year before the service; but to support the present order, the service may be antecedent to the hiring. The case of *Brightwell* v. *Westhalley* (*i*) is certainly in point. That case was thus: *J. S.* was hired to serve from three weeks after *Michaelmas* 1712 to the

(*e*) *Ante*, pl. 364.
(*g*) *Ante*, pl. 193.
(*h*) *Post*, pl. 414.
(*i*) *Ante*, pl. 366.

(*d*) But see Rex v. Ivinghoe, *post*, pl. 414.

Michaelmas 1713, which time he served, and just before the expiration of it, was hired by the same master to serve in the same place for a year then next ensuing, and served accordingly 11 months; and it was held by the Court in that case, that, by the 3 & 4 *W. & M.*, a hiring for a year, and a service for 40 days is sufficient; and although by 8 & 9 *W.* 3. the service must be for a year, yet, there being a hiring for a year, and a service for a year, the statute was complied with. I am not well satisfied with this case, yet I do not see how we can get over it. — PAGE J. I think that the time for gaining a settlement ought to be accounted and to commence from the time of hiring for a year; otherwise, if I hire a man by the week to work in my garden, and he lives with me 11 months upon these terms, and then I hire him for a year, and he lives with me another month, he gains a settlement. — REYNOLDS J. The case of *Brightwell* is exactly in point. The words of the statute are complied with; and though, perhaps, it is not exactly according to the meaning of the legislature, yet there is no material difference in the reason of the thing; for the intention of the 8 & 9 *W.* 3. was only to realize the contract, that it might not be in the power of any one to overload a parish with inhabitants, by contracting with a servant for a year, unless he was able to maintain him so long, and the servant able to work during the year. — PROBYN J. One of the reasons in the determination of *Brightwell* v. *Westhalley* was, that this statute was in affirmance of the common law; for, before the 13 & 14 *Car.* 2. a man was not removeable from the place where he inhabited, his residence determining his settlement; but that statute ascertains what space of time shall be sufficient to gain a settlement, and appoints 40 days. Then the 4 *W. & M.* ordains notice in writing to make an inhabitation of 40 days a settlement, and enacts, that hiring for a year with such service shall be equivalent to notice, so that 40 days' residence in such service gains a settlement under that statute; and, therefore, the words "such service," in that statute, cannot be taken now to import a year's service in pursuance of, or subsequent to the contract; and the 8 & 9 *W.* 3., which was made to explain the other statute, says only, "shall continue in the same "service during the space of one whole year;" but not the space of a whole year after the hiring. — THE COURT came into this opinion. And the order was quashed. (*a*)

Ld. Raym. 1511.

Two services under different hirings may be connected.

S. C. 1 Str. 878. 1 Bar. K. B. 378. 2 Sess. Cas. 166.

369. *Hanmer* v. *Ellesmere*, *M. T.* 4 *G.* 2. EDITOR'S *MSS.* — Two justices removed *R. F.* from *H.* to *E.* — The pauper was hired into the parish of *H.* for *one year*, which year he regularly served in the said parish; and after the said hiring and service, he was, in the year 1718, hired by one *R.*, in the parish of *E.*, to serve him from *Lady-day* to the *Christmas* following, which he did, and was then hired by the said *R.* for *a year*, and served under this second hiring until the end of *May*, making in all above a year. The Sessions, on appeal, adjudged that this service, being under several and distinct hirings, did not gain a settlement, and stated the

(*a*) See Rex v. Underbarrow, *post*, pl. 377. where the authority of this case was acknowledged by the Court. See likewise a very ingenious note of Mr. *Burrow*'s at the end of that case, in which some doubts of Dr. *Burn* are cleared up, and it is made highly probable that the case of *Overton* and that of *South Moulton* are identically the same. Fol. 155. Note by Mr. Bott.

above case. — STRANGE moved to quash this order of Sessions; for that although the statute 3 *W.* & *M.* *c.* 11. make a hiring for a year, and the 8 & 9 *W.* 3. *c.* 30. make a service for a year necessary to gain a settlement, yet, it is not necessary that the service for the year should be under one and the same hiring; and he cited the cases of *Rex* v. *Overton* (*a*) and *Rex* v. *Brightwell* (*b*) to this effect. — THE COURT granted a rule; but, on showing cause they were clear that this point was settled by the cases cited, and also by the case of *Rex* v. *Aynhoe.* (*c*)—The order of Sessions was therefore quashed.

(*a*) *Ante*, pl. 363.
(*b*) *Ante*, pl. 366.
(*c*) *Ante*, pl. 368.

370. *Eardisland* v. *Leominster*, *H. T.* 6 *G.* 2. EDITOR'S *MSS.* — Two justices removed *E. W.*, a single woman, from the parish of *E.* to the parish of *L.*, she being pregnant with a child, which, if born, would be a bastard, and, therefore, likely to become chargeable to the said parish of *E.* The Sessions, on appeal, quashed the order, and stated the following case: The pauper, *E. W.*, as appeared from her testimony given upon oath, lived with *J. S.*, in the parish of *L.*, as a covenant servant, from the latter end of the month of *May* 1731 to the beginning of *May* 1732, for the wages of 2*l.* 2*s.* 6*d.*; she continued in her service during the whole of that time; and a day or two before the expiration of the time for which she was hired, she was again hired by the said *J. S.* for a whole year, at the wages of 2*l.* 5*s.*, and continued in the same service, pursuant to the second hiring, until the middle of the month of *July* following, and then went away from her service without her master's consent.—THE COURT, without any difficulty, quashed the order of Sessions, for that there was a hiring for a year and a service for a year, and it is not necessary that the hiring and service should be under one and the same contract; for if there be a continuation of the same service of 40 *days* after a hiring for a year, and a previous service under a different hiring, so that there is in the whole a service for a year, it is enough. The order of Sessions was quashed.

The service under an imperfect hiring cannot be connected with the service under a perfect hiring, unless under such perfect hiring there is a residence of 40 days. S. C. Str. S. C. 1 Sess. Cas. 226.

But see Rex *v.* Adson, *post*, pl. 382. that it is not necessary for the residence of 40 days to be under the hiring for one year.

371. *Rex* v. *Fifehead Magdalen*, *M. T.* 11 *G.* 2. *Burr. S. C.* 116. — *W. T.* hired himself to one *R. H.* of *W. S.*, from *Midsummer* to *Lady-day* following, at 40*s.* for that three quarters of a year; and at the said *Lady-day* he received his wages of 40*s.*, and left his master's service: he then went to his father's house in *W. S.* before he and his said master had any discourse about continuing in his service, or making any new contract. After he had been with his father about one hour, his father advised him to go to his master, and see if he could not agree with him for a year. He, accordingly, went up thereupon, and met his master, and agreed with him for a year, at 3*l.* 10*s.* a year, and lived with his master but half a year, viz. to *Michaelmas* following, in pursuance of such second agreement; when his master turned him away, and paid him only half a year's wages, which he accepted of, and quitted his master's service. When he went from his master's house as aforesaid, he had no clothes but what he wore, except a shirt, which he left at his master's house in *W. S.* — LEE C. J. It is now established, that a hiring for a year, and a service for a year, will gain a settlement, though all the service be not in pursuance of the first hiring for a year. The reason given by Lord *Macclesfield* for this resolution was, that the words of the acts of parliament were complied with, by there

A *service* of three quarters of a year under a hiring from *Midsummer* to *Lady-day* may be joined to a subsequent service under a new hiring for a year; although the servant received his wages at *Lady-day*, and left his master's house for *an hour*, before the second hiring was made. See S. P. Rex *v.* Ellisfield, *post*, pl. 375.

being both a hiring for a year, and also a service for the space of a whole year, although the whole service for a year was not performed under the hiring for a year. The intention of the acts was to prevent persons of no credit from intruding into parishes; and the hiring for a year was thought necessary, to show that the person had credit enough to be hired for a year by any parishioner who had so much confidence in him. And another consideration was, the benefit received by the parish from the person's labour for a whole year. These were the reasons of the resolution; and this resolution has been adhered to ever since. The only difference between the cases adjudged and the present case is, that in the case now before us it is stated, that after the servant had received his wages for the three quarters of a year, and had left his master's service, he went to his father's, was absent about an hour, and then came back to his master and entered into a fresh agreement for a year. Now I see no reason why this should be looked upon as a discontinuance of the service. The servant was a little doubtful about a new contract; he went to consult his father, and in an hour's time returned and made a new contract, and served as long under it as to make up, in the whole, a complete service for a year. The sameness of the contract has not been so strictly insisted upon, as to make it absolutely necessary that it should be under the very same bargain. I remember a case, which I argued myself, *Ivinghoe* and *Solebury* (*a*), where a shepherd was hired for a year into *I.*, by a farmer who quitted the farm to another person before the year was out, and the servant served out his year with that other person; and he was holden to be settled in *I.*; it being a continuance in the same service, under the same hiring, in the same farm, and under the same contract, which had never been dissolved. — PAGE J. concurred in the same opinion: and did not look upon this absence for an hour, under the circumstance of going to consult his father, to be a discontinuance of the service sufficient to prevent a settlement. — PROBYN J. These acts require a hiring for a year, and a service for a year: and both requisites were here complied with. The present case was not an absolute determination of the service; it was not a total departure; he only went to his father for an hour, leaving part of his clothes at his master's house; and then agreed with him for a year, and lived on with him; so that the service actually continued. It is not stated to be a departure from the service with the consent of his master; and it is the same service, though performed under two contracts. — CHAPPLE J. also concurred in opinion, that this short absence, under these circumstances, was no discontinuance of the service. He thought this determination to be agreeable to the former cases. Upon every new contract there is a sort of discontinuance. The last day of the former contract is the first day of the second service; and this was only an hour's absence within the space of that same day; therefore he remained a servant during the whole time of the completion of his year.

(*a*) See *post*, pl. 414.

A service for 11 months, under a hiring for a year, cannot be joined

372. *Rex* v. *Caverswall*, *E. T.* 31 *G.* 2. *Burr. S. C.* 461. — *S. B.* was hired for a year to *E. B.* of *T.*, at 5*l.* wages; and served him till within three weeks of the end of the year; when, on some disputes arising betwixt him and his master, he was, with his own consent, discharged from his service, and received all his wages,

except what was deducted for the three weeks. As soon as he left this service, he went to *London*, and was absent about a fortnight. Upon his return, at Mrs. *B.*'s request (his master being then from home), he went again into their service; and within a week after the expiration of the first year, his master hired him again for another year; and he served him, in *T.*, for about six months of that second year, and then left him. — LORD MANSFIELD: The determinations upon the poor laws ought to be according to plain common sense, and with the least subtlety possible. A hiring for a year was necessary by the former act (*a*): a service for a year was added by the latter. (*b*) And where the master gives leave, it is a continuance in the same service; as in that case of the herring-fishery, where a man, with his master's consent, hired one to serve for him. (*c*) So where there has been both a hiring for a year and a service for a year, (though the original hiring was for less than a year,) and the service continues, it has not been required that the hiring for the whole year should be strictly reckoned from the first moment of the service; but it shall be considered as sufficient, if there are both a hiring for a year and a service for a year. In the case of *Fifehead*, the service was a continued service; but here there was *a chasm of a fortnight or three weeks.* The first contract was absolutely dissolved; and so continued for a fortnight or three weeks. Therefore this last service cannot be connected with the former part of the year; for if a chasm of a fortnight or three weeks be not a discontinuance of the service, it will be hard to say what is. Therefore I hold that there was no settlement gained at *T.* — DENNISON J. The true reason of the liberal constructions of services for a year has been, because the same service continued; whereas this case is the very reverse; it being expressly stated, that he was discharged; so that we cannot help taking it to be totally dissolved. Indeed in the case of *Aynhoe* (*d*), and in that of *Brightwell* v. *Westhalley* (*e*), the Court (though indeed they were upon a construction somewhat strained too) determined them upon the foot of the service continuing; whereas this service was totally at an end. — FOSTER J. The case of *Fifehead* confirms the principle that the Court now go upon. There they did not consider so small an interruption as one hour, or thereabouts, as an entire dissolution of the contract. But here it is a total dissolution, and the two services cannot be connected: it ought to be a continued uninterrupted service. — WILMOT J. The cases of hiring for less than a whole year, and service, under such hiring, for part of a year, and then a second hiring for a whole year, and service for part of it, is indeed within the words of the act, where the whole service together amounts to one whole year; but here is both a dissolution of the contract, and also an end of the service; both within the first year; whereas in the cases cited the service continued. The case of *F.* was only, as *Lee* C. J. expressed it, a hesitation of the boy for an hour. Therefore it is plain that if he had considered it as a dissolution of the contract, and an end of the service, he would have held the settlement to be bad. It is much the best way to determine these cases upon the poor laws according to plain and common sense; for if once we go upon niceties of construction, we shall not know where to stop; for one nicety is made a foundation for another, and that other for a third; and so on,

to a service of six months under a second hiring for a year, in the first service be clearly *discontinued*, although the second hiring took place before the first year expired.

(*a*) 3 & 4 W. & M. c. 11. § 7.

(*b*) 8 & 9 W. 3. c. 20. § 4.

(*c*) *Vide* Rex v. Goodnestone, *post*, pl. 431.

(*d*) *Ante*, pl. 368.

(*e*) *Ante*, pl. 366.

without end. Therefore he concurred entirely with the rest of the Court; and upon the same principle (*a*), that it ought to be an uninterrupted continuance of the same service; or else, that the second service could never be connected with the former. — The order, removing the pauper from *T.* to *C.*, was affirmed.

The service under a hiring from *Christmas* till *Whitsuntide*, may be coupled with a service till the beginning of *March* following, under a hiring from the *Whitsuntide* for a year.

373. *Rex* v. *Underbarrow and Bradley-Field*, *H. T.* 6 *G.* 3. *Burr. S. C.* 545. — *A. K.*, single woman, hired herself at *Whitsuntide* 1763, to *J. T.* of *C. and L.*, to serve him till the *Whitsuntide* 1764, which method of hiring (from *Whitsuntide* to *Whitsuntide*) is the usual course of hiring servants by the year in the county of *W.* In pursuance of this hiring, she served him till *Martinmas* 1763, received her wages for that time, and quitted his service. At *Christmas* 1763, she hired herself to the said *J. T.*, to serve him at *C. and L.*, till *Whitsuntide* 1764, at 1*l.* wages; which she received. At the same *Whitsuntide* she hired herself for one year to the said *J. T.*, to serve him from that time till *Whitsuntide* 1765, at *C. and L.* aforesaid; and she continued in her said master's service at *C. and L.* aforesaid, under the said hirings, from the beginning of *January* 1764, till the beginning of *March* 1765; and then quitted her said service, and received wages in proportion to that time; being lame, and not able to serve him any longer. — THE COURT, after great discussion of the subject, and examining all the cases, were of opinion, in contradiction to the reasoning of Dr. *Burn*, that this pauper had gained a settlement in *C.*: and the order of two justices, removing the pauper from *U. and B. F.* to *C. and L.*, was affirmed.

If a servant be hired for a year, but runs away, enters into another service, quits it, goes to sea, and then returns to his first master, and serves so as to make up a year, without making a new contract, the former and latter services cannot be joined.

374. *Rex* v. *Ross*, *T. T.* 11 *G.* 3. *Burr. S. C.* 688. — *T. C.* hired himself for a year to *E. M.*, and served him in *L.* only three days. A difference arising between them, *M.* bid the pauper go about his business. On which he immediately ran away, and quitted his service; and hired himself to *W.* for a year, at 2*l.* 15*s.* a year wages, and served *W.* for six months in *Whitchurch*. *M.* then insisted on *W.*'s not keeping the pauper in his service. *W.* paid the pauper his wages to that time; and the pauper quitted that service, and went one or two voyages up the river *Wye*, as a labourer to a bargemaster, for a fortnight; and then, at *W.*'s request, and with *M.*'s consent, returned into *W.*'s service, without coming to any new agreement, or making any mention of wages. He continued in *W.*'s service in *Whitchurch* seven months, being a month over the end of the year for which he was hired, in order to make out his lost time, and then received his wages, his master deducting 7*s.* 6*d.* for the breaking of a plough. — LORD MANSFIELD: Here is an absolute dissolution of the contract, by both master and servant, at the end of six months; whereas the statute requires a continuance in the same service for a whole year. The new service cannot be connected with the old hiring. — ASTON J. In this case, the master and the servant had nothing more to do with each other, after the latter had quitted the service of the former. It is not like the cases of small absences and little excursions, which have been overlooked, and not objected to by the master. Those cases proceed upon the principle of the contract's being continued and not dissolved; whereas in the present case it was totally dissolved. The case of *Caverswall* v. *Trentham* is very strong to this purport.

(*a*) Rex *v.* Inhabitants of Croscombe, *post*, pl. 391.; and Burr. S. C. No. 20. No. 215. S. P.

375. *Rex* v. *Ellisfield*, *H. T.* 17 *G.* 3. *Cald.* 4.—The pauper was hired on the 6th of *December* 1773, to *J. D.*, of the parish of *E.*, to serve till the *Michaelmas* 1774. He went into the service the next day, and continued therein till nine o'clock on the said *Michaelmas-day*, at which time his master paid him his wages, and the pauper took his clothes, and left his master's house and service. About half an hour afterwards, his master came to him in the said parish, and desired him to stay with him: but the pauper desired a sum for his wages, which the master refused; saying, he should see him presently at *B.* fair, which was held that day for hiring servants. At the fair, at one o'clock, he there made an agreement with the master to serve him till *Michaelmas* following, 1775, and went into his service that evening, being the evening of the said *Michaelmas-day* 1774; and continued therein for three months. The pauper thought himself at liberty to hire himself to any other person as soon as he left his master's house; and should have hired himself to any person who would have given him the wages he asked of his master.—LORD MANSFIELD: There is not the difference of an *iota* between this case and that of *Fifehead*; and every argument used there would apply in the present. It is said there, as here, that the pauper left his master's service, received his wages, and was absent some time. He might have hired himself with any other master during his absence. Upon his return he does not agree to continue the *old* service, but makes *a new contract* for more wages. There was, therefore, a complete abandonment and discontinuance. The ground on which the Court went in that case, and which holds equally in the present, was, that the law will not make a fraction of a day; and the reason and justice of the case is with the settlement. As to the interruption and discontinuance, *Chapple* J. observed very properly in the *Fifehead* case, that upon every new contract there is a sort of a discontinuance; and that the law of connecting two hirings within the year, which was now settled, could not have been supported, where the first period was suffered to elapse before the second contract was made, if this were otherwise.—ASTON, WILLES, and ASHHURST Js. concurred.

Service for a year under two hirings within the year will gain a settlement, if the discontinuance does not exceed *a day*, of which the law will not make a fraction. S. C. Dougl. 310.

376. *Rex* v. *St. Giles's Reading*, *T. T.* 18 *G.* 3. *Cald.* 54.—*D.*, on the 19th day of *December* 1763, went into the service of *W.*, who then kept the *B. Inn*, in *St. M.* in *R.*, under a general hiring as a post-boy, and continued in that service for the space of seven months, when he married. After his marriage he remained in his master's service in *St. M.* for the space of four months, when he took lodgings in the parish of *St. G.* in *R.*, and removed thither with his wife, where he slept for the space of seven months, continuing to serve his master for the whole of the last-mentioned seven months without coming to any new hiring, and so served his master for the space of 18 months in the whole, and then left his service.—THE COURT were of opinion that these services in the successive years could not be connected so as to give the pauper a settlement in the parish of *St. M.*, because under a general hiring a new hiring for a year is presumed every successive year, and at the commencement of the second year, the pauper, being a married man, was incapable of hiring himself as a servant.

Services in successive years will connect only when the servant, at the commencement of the succeeding year is unmarried. R. v. Great Chilton, *post*, pl. 388.

Increase of wages upon a second hiring for less than a year, on the day the first hiring for a year ended, and a removal into another parish, are not such a *discontinuance* of the *first service* as will defeat a settlement under it.

S. C. Dougl. 309.

377. *Rex* v. *Underbarrow and Bradly-Field*, *H. T.* 20 *G.* 3. *Cald.* 65. — *H.* was hired for one year from *Whitsuntide* 1770 to *Whitsuntide* 1771, to *D. B.*, in the township of *U. and B.*, for the yearly wages of 18*s.* The pauper entered upon her service accordingly, and served and lived with *B.*, in *U. and B.*, under the said hiring, till the 12th day of *May* 1771; when he removed with her into the township of *S.*, and she there continued for seven days in his service; which completed her service of one year under the said hiring, and received her wages of 18*s.*; and then, being under age, hired herself again to the said *D. B.* for another year, from *Whitsuntide* 1771 to *Whitsuntide* 1772, for the yearly wages of 25*s.*; and, under the said last-mentioned hiring, continued in the service of *B.*, in *S.*, from *Whitsuntide* 1771 till *Candlemas* following; when, her master's goods being distrained and sold for arrears of rent, she, by mutual consent, quitted her service, and received her wages till that time. — LORD MANSFIELD: The point is fully settled; and we are all very clear, that this was a continuation of the same service with an increase of wages.

Service under a hiring for a *year* will connect with similar preceding services under any number of hirings from *week to week*.

370. *Rex* v. *Bagworth*, *E. T.* 22 *G.* 3. *Cald.* 179. — About nine weeks before *Old Michaelmas* 1780, the pauper was hired by *H.*, of *R.*, for one week, at 2*s.* 6*d.* a week wages, and continued to live in that service in *H.*'s house, at *R.*, by the week, till *Old Michaelmas*, and received her wages every week. During that time she considered herself at liberty to have quitted her service at the end of any one week, and to have hired herself to any other person. At *Old Michaelmas* 1780, she was hired for a year from that time, and she served till about a fortnight before the following *Old Michaelmas*; when, being with child, she was desirous to conceal the knowledge of it from her master, and applied to her master to leave her service; and they parted by consent, and he paid her her wages up to that time: she was employed in the same manner during the time she served by the week as under the hiring after *Michaelmas*. — WILLES J. The question raised upon the merits is perfectly clear: The pauper did not live in this family occasionally, or work under their directions merely as a day-labourer, or char-woman, but constantly as a menial servant, and employed throughout in the same services: and a hiring for a year with a year's service in the whole, and that of a similar nature throughout, though it is made up of several hirings, (provided there be no discontinuance) gives a settlement. — BULLER J. Here is a continuance in the service for a year; and it has been long settled, that where the service extends throughout the year, you may couple any number of preceding hirings and services with a hiring for year. The extent and duration of the several preceding services, where such services have been similar, have never been adjudged to vary the law; but there must be one entire hiring for a year. — ASHHURST J. concurred.

If a servant be taken ill on the day he is hired, and on going to his service a month afterwards the master's wife refuse

379. *Rex* v. *Wintersett*, *E. T.* 23 *G.* 3. *Cald.* 298. — The pauper was hired at *B.* statutes, which are held a few days before *Martinmas*, to *T. O.*, of the township of *S.*, for one year; received 1*s.* for his *godspenny*; and was to have 3*l.* 3*s.* for his wages. The very night of the hiring he *fell ill*, and continued sick and unable to go, and *did not go into his service till a month after Martinmas*; when he and his mother went to the master's house, who being

home, they were shown to his wife, who complained that per had not come to his service according to the agree- and *therefore refused to receive him:* whereupon the pauper's r said, "*We must fall into your will for wages, and take t you will allow us;*" and left the pauper in his service, he continued until *Martinmas* following; when the mother ent for, and received for 48 weeks' wages after the rate of *l. per* week; being *less than the rate of the original wages.* — MANSFIELD: The service never commenced under the ontract; if it had, no doubt the master must have supported his sickness. But that is not the question; the point is, he agreement acted upon here was a fresh agreement, when covered from his sickness; and the beginning of his service hen. Under the former the mistress refused to receive

to receive him, but, on the servant's mother saying, in his presence, that the wages shall be left to the master, he is left in the service, and deduction made for the month, the *service* never commences under the first contract.

Then, considering the old contract at an end, the *actual* was for 11 months; that is, to the *Martinmas* next: and ubmitting to the abatement of the month's wages at the f the year is an affirmance of the agreement made by his r; and this, as rescinding the original agreement, destroys than the *legal or constructive service;* it shows also, that was no hiring for a year: so that both the hiring and ser- must be considered as imperfect and ineffectual. — BULLER J. ervant be taken ill after the service has commenced, the r is bound to support him, and cannot turn him away on that nt. But it is not true, that the service began under the ontract: that was executory: it was made some days before *inmas*, to commence at *Martinmas;* and, in fact, it never enced. When the pauper went, they made a new contract, nder that his service commenced. — WILLES J. concurred.

Rex v. *Grendon Underwood*, *T. T.* 23 *G.* 3. *Cald.* 359. *B.*, the pauper, was born in *D.* At *B.* hiring-fair 1773, was the *Friday* before *Michaelmas-day* (old style), he hired lf from *Michaelmas* (old style) for a year to *J. H.*, a farmer *U.*, to be his carter; and had 1*s.* earnest, and was to have ages, and go into his master's service the *Wednesday* after *elmas-day* (old style): the pauper accordingly came that the afternoon to his master's, at *G. U.*, where he had some hment, and his master told him he had hired another servant place he had hired him to do; but that he wanted a man k and go to plough; and if he liked that work he might the pauper, thinking himself not well used, refused that e, and the master told him he might keep his earnest and go his business; upon which the pauper said, "Am I at liberty ire myself to any other person?" And his master answer- in the affirmative; both the master and pauper looking themselves at liberty from their contract with each other. this the pauper left his master's house, taking his clothes with him, and went to an alehouse at *E.*, another parish about mile from *G. U.;* and in the course of the same afternoon aster met with him at the alehouse, and hired him to serve ace of milkman, and to go to plough, and gave him 2*s.* 6*d.* it, and agreed to give him 6*l.* 6*s.* wages, to serve him from that till *Michaelmas* (old style): upon which the pauper imme- y entered into his service, and continued therein till the next *ary;* when, his master's carter having left his place, his

Service under a hiring a few days before *Michaelmas* for a year, viz. from *Michaelmas* to *Michaelmas*, and under a hiring again to the same master three days after *Michaelmas* till the *Michaelmas* ensuing, though at different wages, and for a different service, will connect to give a settlement.

master hired him to serve the place of carter from that time to *Michaelmas* (old style), and gave him 1*s.* earnest, and agreed to give him 10*s.* 6*d.* additional wages; and the pauper continued that service till the next *Michaelmas* (old style), and received his wages. It was admitted upon the argument, and appeared upon the almanack, that *Michaelmas-day* (old style) was, in 1778, upon a *Sunday*. — LORD MANSFIELD. In this case it is expressly stated, that on the *Friday* before *Michaelmas-day* the pauper was hired for a year from *Michaelmas*. It is then expressly stated, that they stood in the relation of master and servant from *Michaelmas* to *Michaelmas*. If so, it would be repugnant to say, that this was not a hiring for a year. The case itself contradicts the idea, that it was a hiring from the *Wednesday* after *Michaelmas*. Then, the absence was matter of indulgence on the part of the master; and whether revocable or not, is so common in these transactions, and so reasonable upon the commencement of a service, that it never has been considered as impeaching or affecting the validity of a contract. But under all these circumstances I consider it as an indulgence which the master might revoke: what passed upon the *Wednesday* was a conversation respecting the different kind of labour in which the master then proposed to employ the servant. The servant gives up his objection; the master betters his wages; and the service goes on and is completed. It seems, therefore, to be a hiring and service for a year, without any interruption on account of the short disagreement. — WILLES J. The case of *Wintersett* (*a*) is very different from the present. There, after an absence of a month, the mistress refused to receive the servant without a new contract; under which the servant submitted to make a compensation to the master for lost time during his absence: here, on the contrary, the master, having disappointed the servant of the service intended, made a recompence to the servant by giving him another service and additional wages. Nice distinctions, subtleties, must not be admitted to deprive a man of his settlement. As to the rest, as the whole was the transaction of a day, this seems to be governed by that of *Ellisfield*; where the Court would not allow the fraction of a day. — BULLER J. Whether in this case there was a sufficient service or not depends upon the hiring. The whole, therefore, turns upon the first question made, Whether here is a hiring for a year? for, if there was not, there could be no valid service for a year. That question, then, depends upon the terms of the contract; and in this, as in all other contracts, by the universal rule of expounding them, all the words must have effect given them, if possible. Now, the whole of the argument on the other side turns on giving only part of them effect. The case states expressly a hiring for a year: and if you construe the conduct of the servant in not coming into his service till the *Wednesday* as an act of right founded upon an exception in the original contract, you overturn that contract; whereas by construing it as a licence or dispensation, you give effect to the whole. If, then, after the hiring for a year, which is expressly stated in the case, the leave of absence was given, absence by leave is the same thing as service. Upon the ground that the service here never commenced, the case of *Wintersett* has been relied upon; but does not apply. In that case, the pauper did not go to his place till a month after his term commenced, and never sent any notice why he did not

(*a*) *Ante*, pl. 379.

go. There did not appear to have been any communication of any kind between his master and the pauper during all that time, much less any intimation of his illness and inability to come: neither did it appear, at the time of the new contract being entered into, that he insisted upon, or any way brought forward this plea. Therefore, though the act of God discharges the obligation of actual service, it did not appear at the point of time to be looked to, the time when the first contract was rescinded, that the case came under that rule. It follows, that the pauper was there hired for 11 months only, and that no annual service ever commenced.

381. *Rex* v. *Sulgrave*, *E. T.* 27 *G.* 3. 1 *T. R.* 778. — The pauper, subsequent to his gaining a settlement at *S.*, was hired the latter end of *November* 1785, to *J. W.*, of *W.*, till *Michaelmas* then next, at 6*l.* 10*s.* wages. Two or three days before *Michaelmas* the master offered him the like sum for the year ensuing, which the pauper did not think sufficient. On *Michaelmas-day* the master offered him 7*l.* 7*s.*, and they had agreed for wages all but the expence of washing. The servant had no intention of leaving his master, and he believed his master had no intention of parting with him. He continued in his master's house, and did what was to be done as usual, but without any obligation, lodged at his master's house, and did not remove any of his clothes, or offer himself to any other master, nor did his master seek after another servant. He thought himself at liberty to have left his master if any better hiring had offered. He did not agree with his master on this day; but the day next but one, being the second day after *Michaelmas*, the pauper agreed to accept the 7*l.* 7*s.* as before offered him for the year ensuing. He did not expect that his wages were to be due on the following *Michaelmas*, but at the expiration of the year, from the day he agreed with his master to accept the 7*l.* 7*s.*; and he continued in the service till the *Whitsuntide* following.—ASHHURST J. I think this was a good service in *W.* All that the statutes require is, that there shall be a hiring for a year, and a continuance in the same service for a year. Now the case states, that in *November* 1785, the pauper was hired to serve till the *Michaelmas* following: that two or three days before *Michaelmas* the master offered him the same wages for the next year; that on *Michaelmas-day* he offered him 7*l.* 7*s.*, and that on the second day after *Michaelmas* the pauper agreed to accept the 7*l.* 7*s.* which had been before offered: it is further stated, that the pauper had no intention of leaving his master, and that he did all his master's work as usual. And though he thought himself at liberty to leave his master's service on the *Michaelmas-day*, and that, when he agreed with his master the second day after *Michaelmas*, he considered that the year was to be computed from that day, yet there was a good hiring and service for a year. If so, the only question is, Whether there was any discontinuance? It appears from the case that there was not; for the servant continued in the same capacity; he did his work as usual; and if he had continued to serve for half a year without entering into any new contract, he would have been entitled to a compensation for such services; the law would have implied that he continued under the former agreement, and would have measured his damages by his former wages. Then he must be taken to have been in the capacity of a hired servant during that

If a servant be hired, and serve from *November* to *Michaelmas*, and before *Michaelmas-day* his master offers to hire him from *Michaelmas* for *a year* at certain wages, to which he does not agree, but remains in the house till the second day after *Michaelmas*, working as usual, and then accepts the offer, and serves *part* of the year; the *service* under the latter hiring commences on the *Michaelmas-day*, and may be *coupled* with the former service so as to gain a settlement.

(a) Post, pl. 391.

time. This is like the case of *Rex* v. *Croscombe*. (a) There the pauper was hired to Dr. *Lucy*, who lived in *St. A.*, for a year, and he continued with his master a quarter of a year longer without coming to any new agreement, when he removed with his master into the parish of *St. C.*, where he continued six months. There was a sufficient continuation of the same service so as to give the servant a settlement in *St. C.* In that case the servant was as much at liberty to quit his master's service after the first year, as the pauper in this case was on the *Michaelmas-day*, and it might as well have been said, that in that case there was not a continuance of the same service; but there the pauper gained a settlement by his service in *St. C.* The cases which were cited do not apply; for one was determined on the ground of there being no fraction of a day, and in the other there was a total discontinuance of the service; and though the service was only discontinued for a day, it could not be coupled with the subsequent one so as to give the pauper a settlement. — GROSE J. I agree with the counsel who argued against the rule, that two services cannot be joined if there be a chasm between them, or if they be not *ejusdem generis*: but in the present case there was no chasm, and the services were *ejusdem generis*: First, As to the supposed interruption; it is stated, that the pauper was hired from *November* till the *Michaelmas* following, and that on the *Michaelmas-day* his master offered him 7*l.* 7*s.* for the next year, which he did not agree to accept till the second day after *Michaelmas*; but I think that the moment he agreed to take the 7*l.* 7*s.*, he consented that the year should commence from the *Michaelmas-day*, when the offer was first made. Then, as to coupling the services: it was determined soon after the passing of the statute of 8 & 9 *W.* 3. *c.* 30., in the case of *the Inhabitants of South Molton*, that a service for half a year under a hiring for a year might be joined with a service for another half year under a hiring for half a year, because they were *ejusdem generis*: so here the first hiring and service from *November* till the *Michaelmas* following may be coupled with the subsequent one, as they are both of the same nature.

A settlement may be gained by serving a year under different hirings, if one of them be for a year, though there be not 40 days' service under the yearly hiring.

382. *Rex* v. *Adson*, *H. T.* 33 *G.* 3. 5 *T. R.* 98. — The pauper was hired in *C. S.*, eight days after *Old Michaelmas* 1786, to the *Old Michaelmas* following, and continued in his master's service till the day after *Old Michaelmas-day* 1787, when he was hired by his master till the *Michaelmas* following: and under that hiring he only served 10 days. The Court of Quarter Sessions thought that the second hiring was a hiring for a year, but that the pauper had gained no settlement under it, as he had not served 40 *days* subsequent to that hiring. — THE COURT were of opinion that the pauper had gained a settlement in *C. S.*

If A be hired at *Martinmas* to serve in husbandry for a year, at 8*l.* a year; and in the middle of the year he marries, and then agrees to serve his mas-

383. *Rex* v. *Great Chilton*, *T. T.* 34 *G.* 3. 5 *T. R.* 672. — *Blakey*, at *Martinmas*, was hired by *Grenwell* of *G. C.*, as a servant in husbandry for a year commencing from *Martinmas*; his wages were to be about eight pounds a year, with meat, drink, washing, and lodging, in his master's house. He entered upon his service at *Martinmas*, and resided in his master's house in *G. C.* In the beginning of the ensuing *January*, he married, but continued as a menial servant with *Grenwell* until the *May-day* following. Some days before *May-day*, *G.* and the pauper agreed that the pauper with his wife should go as a hind to reside on, and manage another

farm which *G.* had in the same township: this second agreement was for a year from that *May-day*, and the pauper was to have *5s.* a week; the house to live in rent-free, and some other trifling perquisites as persons in that capacity usually have. And accordingly he continued to serve *G.* as a hind for two years from *May-day*, being during all the last-mentioned period a married man.— LORD KENYON C. J. This case appears to me not free from difficulty and doubt, but upon the whole I think that the pauper gained a settlement in *G. C.* To the case of *Rex* v. *St. Giles's, Reading* (*a*), I perfectly accede, but that cannot decide the present case. There the pauper was hired generally, which the law construes to be a hiring for a year, at a time when it was competent to him to acquire a settlement by hiring and service; he was then unmarried: when the year expired, there was an end of the contract; by continuing in service after that time the Court would infer a second hiring for another year: but at the end of the first year he was a married man, and was disabled from gaining a settlement by a service under a contract entered into at that time. But in the present case the pauper was unmarried when he made the first agreement; and though he married in the course of that year, it has been very properly admitted that that alone did not defeat his settlement, if he served out the remainder of the year under the original agreement, made before his marriage. But it has been contended that that contract was dissolved. I admit that, if there were an end of the relation of master and servant when the second agreement was made, the pauper could not gain a settlement in *G. C.*, but I do not think that that was the case. An alteration indeed in the man's situation took place; perhaps it was more convenient for him to live with his wife in a separate house, than to continue to live in his master's family, and therefore it was agreed that he should go to another farm of his master's in the same township. But that alone did not put an end to the former contract. If a master who had kept a house and an establishment of servants, chose to break up housekeeping in the middle of the year, and to put his servants on board wages, that would not put an end to the relation between the master and his servants, nor defeat the settlements of the latter. Then it was objected, that the servant's employment after his marriage was different from that under the original contract: but I cannot discover much difference; for under both agreements he was to serve in husbandry. And even if the nature of the service were varied, that would not defeat his settlement. A footman who was converted into a butler, would gain a ssttlement by completing a year's service, notwithstanding such a change in his station. In this case also there was a prolongation of the time of service, and he was to continue half a year beyond the period originally agreed upon; there was also an alteration of wages adapted to his change of situation. But I do not think that either of these circumstances affects the case. The whole question turns on this, whether or not there was a dissolution of the former contract; for if there were, the second agreement was made at a time when by law he was disabled from gaining a settlement by hiring and service. I speak with great diffidence on this case, understanding that the majority of the Court are against my opinion. But it strikes me that there was no end of the relation of master and servant, even for a moment, during the whole time the latter

ter as a hind for a year, from that time, at *5s.* a week, and to live out of the house at another farm belonging to his master, a service under these *several hirings* does not gain a settlement.

(*a*) *Ante*, pl. 376.

continued in service; and that as the first contract was not dissolved by the subsequent alteration of situation, the pauper gained a settlement in *G. C.*, by serving more than a year under a yearly hiring entered into when he was an unmarried man. The case of *Rex* v. *Alton* warrants this opinion; though that indeed appears to be a more doubtful case than the present, because there, under the second agreement, the pauper was to work by the piece, which seems to imply a liberty either to work or not as he pleased. — ASHHURST J. At first I was inclined to think that the former contract was not absolutely dissolved, and that the second was merely a continuation and modification of it; but on farther consideration I am of opinion that the first contract was entirely put an end to by the second. This is very distinguishable from the case of *Rex* v. *Alton*, for there the principal alteration was in the terms of the contract respecting wages; the servant was to be paid by the piece instead of by the year. Whereas in this case there was a variation also in other circumstances. Under the first contract the pauper was to live in his master's house as part of his family, and was to receive his yearly wages of 8*l.*: under the new contract the terms were materially altered, the servant was to go into another farm of his master's, he was to receive weekly wages, and was to continue in service for a year from that time. After the second contract, if the master had wished to compel the servant to return to his own house, and to live in his family at the former wages, the latter might have resisted on the ground of the second contract, which shows that the former one was abandoned, and that the pauper was not serving under it. Then if the second were a new contract, distinct from the former one, the services under the two cannot be coupled for the purpose of giving the pauper a settlement, because at the time of entering into the second he was married. — GROSE J. I agree to the *Alton* case; and here if the original agreement had continued in force, the pauper would have gained a settlement by serving a year under it. But the question is, Whether or not there was a dissolution of the service and of the first contract? I cannot say that the service under the second contract was a service under the first, because, on comparing the two contracts together, it appears that there is a difference in the duration of the term, in the kind of service, and in the wages, the former of which is the most material; and where two agreements are totally inconsistent, the second must operate as a dissolution of the first. By the first contract the pauper was hired for a year, to commence at *Martinmas;* he served under that till *May* following, when he made another agreement with his master for another year, to commence at that day. Suppose at the end of the first year the servant had said, that he would no longer continue in his master's service, for that he had been serving under the first agreement only, and was not bound to serve under the second, there is no doubt but that the master might have compelled him to serve until the *May* following by virtue of the second agreement. This shows that the second agreement put an end to the first. It is not necessary to lay so much stress on the two other instances of difference between the two contracts, the kind of service, and the *quantum of wages;* I rely most on the alteration of the term of service, which I think is decisive. — LAWRENCE J. It seems to me that in these cases no

question arises respecting the benefit of any particular settlement gained by the pauper, but that the question must be considered on the facts as between the two contending parishes, because if the pauper be not settled in one, the burden of maintaining him and his family falls on the other; and therefore there can be no bias in favour of one or the other settlement. In order to gain a settlement by hiring and service, there must be a hiring for a year, and a service for a year, and the service for the last 40 days must be performed under a contract of hiring entered into when the pauper was unmarried. Then the question in the present case is, Whether or not there was a dissolution of the first contract, and not whether there was a discontinuance of the service? for in *Rex* v. *St. Giles's, Reading*, the pauper continued all the time in the master's service; and there is no difference in this respect, whether the contract be put an end to by flux of time or by agreement. The only way in which it can be considered that the pauper gained a settlement in *G. C.* is, by treating the second as a prolongation of the original contract; and it has been argued that by the second agreement the pauper was to serve until the end of the then current year, and for six months longer. But it strikes me that that is not the fair construction of the second agreement; at the end of the first six months' service the pauper did not agree to serve for six months after the end of that year, but for a year to commence at the time of the second agreement. On the whole it appears to me that the second contract was distinct from the former one, and put an end to it, because the second was inconsistent with it; so that the pauper gained no settlement in *G. C.*, because the service for the last 40 days was not performed under a yearly hiring entered into when he was unmarried.

384. *Rex* v. *Sutton*, *T. T.* 41 *G.* 3. 1 *East*, 656. — The pauper, having gained a settlement in *C.*, hired himself by the week, to *H.* of *S.* Nothing was said about *Sunday* in the contract; but the pauper worked on that day occasionally when asked by his master, without receiving any additional wages: though he sometimes received some victuals. He received his wages every *Saturday* night or *Sunday* morning; and resided in his master's house during no part of the time, but boarded himself. That at the expiration of nine months, on his master's family servant going away, the pauper was hired in his place for a year, at 12*l.* *per annum*, and served 11 months under that hiring. The Sessions being of opinion that the pauper gained a settlement in *S.* under such hiring and service, confirmed the order. — LORD KENYON C. J. It has now been too long settled to be recalled, that if there be a hiring for a year and a service for a year, though but a small part of the service were performed under the yearly hiring, a settlement will be gained. But an attempt has been made to introduce a new head of settlement law, of which I have no knowledge, under a notion that only services *ejusdem generis*, as it has been said, can be joined. That term got into fashion some time ago. At that period *Foster* J. thought that settlements were too easily acquired by the construction which the Court was inclined to put on the statute: but since then the leaning has been in favour of them; and it has been supposed that a person ought to gain a settlement in that parish where he has laboured

A service under a hiring by the week (the servant boarding and lodging himself), nothing being said about *Sunday*, but the servant working on that day occasionally when asked by his master, without additional wages, though he sometimes received victuals, may be joined with service under a yearly hiring as a menial servant; so as to confer a settlement by hiring and service for a year.

for a certain time, as a reward for his labour; a strange idea, if examined; because somewhere or other he must at any rate be maintained if he be in want of it. I know not how to state this as a question upon which any doubt can be made. The pauper was hired by the week: nothing was said about *Sunday*; it is very seldom that there is: Why then is that day to be excluded? If a servant be hired for a year, nobody doubts but that *Sundays* are included. Then why not included in a weekly hiring, if no exception be made? The Sessions have found that there was a hiring by the week, which must mean the whole week. There is nothing stated to show it was otherwise intended. The pauper was paid sometimes on the *Saturday*, sometimes on the *Sunday*; and whenever the master ordered him to do any work on the *Sunday*, he did it. What is to be concluded from thence, but that it was his duty to do so. How do these facts show that he was not under the master's control on the *Sundays* as well as other days of the week? In *Rex* v. *Wrington*, it appeared from the circumstances that *Sundays* were excluded. But it is said, that the services cannot be joined, because they were not *ejusdem generis*. I really know not what that means, nor where the line is to be drawn. Suppose a postillion was made coachman; would those be deemed services *ejusdem generis*? It is said, that he was first an outdoor servant and then a *family* servant: but I do not know what difference that made in his services. Upon the whole, I cannot do better than adopt what the justices below have done: they have determined that there was a continuing service for a year and a hiring for a year, and that he gained a settlement; and I think they are warranted by the authorities in that conclusion. — GROSE J. First it is objected that the servant was not under the control of his master the whole year. Secondly, that the services were not *ejusdem generis*, and therefore cannot be joined. As to the first, it is said that *Sundays* were not included in the weekly hiring. But why not? The hiring was by the week, and nothing was said about *Sunday*: and he did whatever his master bid him do on that day. What are we to collect from thence, but that the parties considered that *Sunday* was included? and the justices have, by their order, found that it was. Then 2dly, as to the services not being *ejusdem generis*; under both contracts the pauper was a servant in husbandry, only boarding in the one case out of the master's house, and in the other boarding in it. Then what is this, but the same sort of service throughout? — LAWRENCE J. assented. — LE BLANC J. I cannot see upon the facts stated, that the service under the one hiring was of a different nature from that under the other. — Order confirmed.

A pauper, before the expiration of her apprenticeship, hired herself and served for one year, the last four months of which were after her indentures had expired, and then hired herself to

385. *Rex* v. *Dawlish*, *H. T.* 58 *G.* 3. 1 *B.* & *A.* 280. — Removal from *C. H.* to *D.* — Order confirmed, subject, &c. — The pauper, by indenture dated *September* 3, 1804, was bound apprentice by the parish officers of *B.*, to *R. P.* of that place, till she should attain the age of 21; whilst under this indenture she served *J. B.* with *R. P.*'s express consent, for two years in the parish of *D.*, after which, in *May*, 1812, she hired herself as a yearly servant to Mrs. *B.* of *C. H.* for 4*l.* a year. In the *September* following the indentures expired. At the end of her year, the pauper again hired herself for another year to Mrs. *B.*, and served 10 months under this last hiring. There was no in-

terruption between the two services. The first year's service with Mrs. *B.* was without the knowledge and consent of the master. — LORD ELLENBOROUGH C. J. If this were *res integra*, there might be some difficulty in admitting the principle that a service without a contract might be coupled with service under one, so as to gain a settlement, but that having been decided, this case ranges itself under the same class. Here, after *September* 1812, when the incapacity ceased, the pauper became a regular servant to Mrs. *B.* There is no interruption in that service, and she continued there above a year after that time; she therefore gained a settlement at *C. H.* — BAYLEY J. concurred. — ABBOTT J. The first contract was either valid or void; if valid, then there is a good hiring and a good service; if void, then the first year's service will be a year's service under no contract at all, which, according to the argument, it is admitted may be coupled with the service under the second hiring. In either case the settlement is at *C. H.* — HOLROYD J. concurred. — Order of sessions quashed.

the same person for another year, but served only 10 months: Held, that the first service (although without the consent or knowledge of the master), might be coupled with the service under the last contract, and that the pauper thereby gained a settlement.

386. *Rex* v. *Fillongley*, *H. T.* 58 *G.* 3. 1 *B.* & *A.* 319. — Removal from *C.* to *F.* — Order confirmed, subject, &c. The pauper being settled in the parish of *F.*, previous to *Old Michaelmas*, in the year 1812, was hired by one *W. H.* of *A.*, from the then next *Old Michaelmas*, for a year, at 7*l.* 10*s.* wages; at the same time the said *W. H.* said to the pauper, that he did not know the custom of the parish as to hiring for a year or 51 weeks; that he would inquire, but he believed it must be for a year, and hired him for a year. The pauper entered into the service in pursuance of this contract, three or four days after which *W. H.* (having previously to the pauper coming into his service ascertained that the practice of the parish was to hire for 51 weeks) asked the pauper whether he would consent to the hiring being for 51 weeks, to which the pauper consented. He continued in Mr. *H.*'s service until a week before *Old Michaelmas* in the next year, when the said *W. H.* paid him the 7*l.* 10*s.* for his wages, and asked him to stay on till *Old Michaelmas*, which he agreed to do on being paid for it; he staid till *Old Michaelmas*, and received 1*s.* 6*d.* for that time. — LORD ELLENBOROUGH C. J. If the statutes are to be strained in any respect, it seems to me that the mind revolts much more from coupling a previous service with a subsequent hiring for a year, than from the conclusion to be drawn in the present case. I think this case, therefore, within the limits of the former decisions. If it were now for the first time under our consideration, I should be disposed to pronounce a different judgment, but the decisions are so numerous upon the subject, and we should overturn so many settlements if we were to overrule them, that I feel myself bound by their authority to hold this to be a good hiring and service. — BAYLEY J. I am of the same opinion, upon the ground of the authorities alone. There is in this case a hiring for a year, and a service for a year, and that according to the decisions will be sufficient to confer a settlement. — ABBOTT J. I am of the same opinion, and I think that it is better to abide by the fixed and settled rule of construction given by the decisions, than to introduce any new questions by departing from them. — HOLROYD J. concurred. — Order of Sessions quashed.

A service under a hiring for 51 weeks may be coupled with a service under a previous hiring for a year, so as to confer a settlement.

The father of a pauper, aged 14 years, agreed by parole to give a shoemaker 1*l.* 1*s.* for teaching his trade to the pauper for 12 months. The son served the 12 months under that agreement. At the end of that period, the father agreed that his son should work for the shoemaker for 12 months, making shoes at 8*d.* *per* pair the first six months, and 4*d.* *per* pair the last six months; under this latter agreement the pauper served six months *only:* Held, that this latter service could not be connected with the service of the former year, so as to give a settlement, inasmuch as the first agreement created the relation of teacher and scholar, and not that of master and servant, and the whole year's service, required to confer a settlement, must be under a contract or contracts creating the relation of master and servant.

(*a*) *Ante*, pl. 282.

387. *Rex* v. *St. Mary, Kidwelly, E. T.* 5 G. 4. 2 *B. & C.* 750.—Upon an appeal against an order of two justices for the removal of *W. W.*, his wife and children, from *St. M. K.*, in *C.*, to *L.*, in the same county, the Sessions quashed the order, subject, &c.—On the trial of the appeal, the appellants admitted that the legal settlement of the pauper, *W. W.*, had been in the parish of *L.*, but contended, that he had gained a subsequent settlement by hiring and service. The appellants proved, that when *W.* was about 14 years of age he lived with his father, in the parish of *St. I.*, in the county of *C.*, and being desirous of being apprenticed to a shoemaker, his father agreed with one *J. T.*, a shoemaker, in the parish of *St. I.*, to give him 1*l.* 1*s.* for teaching his son, the pauper, the trade of a shoemaker, for 12 months, the father finding the pauper lodging, and every thing else during that time. The pauper served the whole 12 months under that agreement. There was no indenture or writing, but the pauper considered it as an apprenticeship, and his father and master treated and spoke to him as an apprentice during such 12 months; and his father and master told him there was 1*l.* 1*s.* paid for teaching him the trade. The pauper's father, at the end of the year, came to an agreement with *T.*, that the pauper should work with *T.* for 12 months, making shoes at 3*d.* per pair the first half year, and at 4*d.* *per* pair the remaining half year. The pauper worked with him about *six months* under that agreement, and then went away and worked at several places, until his marriage, which happened 1785. He soon afterwards removed to the parish of *St. M.*—BAYLEY J. The question in this case is, Whether a settlement has been gained by hiring and service? In this case there was a contract of hiring, but, under that contract, there was only a service for six months. If, however, that service can be connected with the service of the preceding year, then a settlement was gained in the parish of *St. I.* Now, in order to gain a settlement by hiring and service, the service must be under a contract, creating the relation of master and servant. Here, the first contract created only the relation of teacher and scholar, and the service under it not being under a contract of hiring, cannot be coupled with the subsequent service. *Rex* v. *Bilborough* (*a*) is an authority in point. There the master agreed, by parol contract, to teach the pauper to make stockings during the year, for which he was to receive 2*l.* 2*s.*, and the pauper was to have his earnings, paying his master for the use of the frame, &c.; and the pauper continued in the service a year and a half, and it was contended, that the pauper gained a settlement by hiring and service; but the Court said that the pauper never contracted to serve the master, and that the only agreement was, that the master should teach the pauper for a year. In the present case, there was no obligation on the part of the pauper to serve the master, nor could he have been punished for refusing to do so. The relation existing between them was that of teacher and scholar. Now, although it be clear that services under different hirings may be connected, so as to complete the year's service, yet, the whole of the several services contituting the year's service, must be under a contract or contracts, creating an obligation to serve. In this case, there was not any obligation on the pauper to serve under the first agreement. That service, therefore, not being a service under a contract

ting the relation of master and servant, cannot be connected the subsequent service; and there being only a service of six ths under a contract of hiring, no settlement was gained. — TLEDALE J. In order to gain a settlement by hiring and ce, the service must be for a year, under a contract or con- s creating the relation of master and servant. The pauper ed only six months under such a contract. The contract r which he served during the former year, created the relation aster and scholar, and not that of master and servant. The ice under that contract, therefore, cannot be connected with ervice under the subsequent contract, for the effect of that d be, to enable the pauper to gain a settlement by a service, y under a contract of hiring, and partly under a contract of a rent description; whereas the entire year's service ought to be r one contract of hiring. — Order of Sessions quashed.

X. *Of Service in different Places.*

8. *Rex* v. *Ashton*, *T. T.* 12 *A. MSS.* — The pauper was l for a year in the parish of *A.*, where she served for half a , and then the master and she removed to the parish of *P.* to her farm, where she continued the rest of the year. — KER C.J. Before the making of the 13 & 14 *Car.* 2. no person removable, nor by that statute after 40 days are expired. by the 3 & 4 *W. & M.*, such 40 days are to be computed from otice in writing, which must be published in the church. All , however, extended only to such persons as were removable. a servant coming into a parish with his master is not re- able. The act 3 & 4 *W. & M.* goes on to make a farther pro- n, that any unmarried person, &c. being lawfully hired into parish for a year, such service shall be adjudged a good set- ent. As it stood upon this act, there was a *quære* what was meaning of the words, "such service;" whether such service ld relate to the contract for a year, or to the 40 days? But 8 & 9 *W.* 3. clears up that point, that the words "such service" s to relate to the contract, and to prevent persons running y from their service, but it cannot relate to the 40 days. So if a person be hired to a master in one parish, and go with and serve him 40 days in one, and go with him into several rs, and serve 40 days in each, and serve his master for one le year, that parish in which he continues last for 40 days re the end of the year, shall be the place of his settlement; if he run away from his master during the space of that year, gains no settlement at all. And the reason why the 40 days' dence gains a settlement is, because he comes there with his ter, and you cannot remove him or her from his or her master; , therefore, being once so far settled that they cannot be re- ed, that is accounted a settlement. It would be the hardest imaginable upon servants who come to *London* with their ters, and live one half of the year in *London*, and the other in the country, to be incapable of gaining any settlement at which can be done upon no other construction of the statutes. BY THE COURT. The settlement is at *P.*

A service of half a year in one parish, and half a year in another parish, with the same master, is sufficient.

S. C. Foley 188. Sett. & Rem. 28.

9. *Rex* v. *Eldersley*, *M. T.* 4 *G.* 1. *MSS.* — *A.* hired himself a year to be warrener, in the parish of *E.*, in a warren there,

If a servant be hired to two

masters in different parishes, he shall be settled where he lodges.

to joint occupiers of it who lived in two parishes, distant from the parish of *E.* He dieted and lodged for eight weeks with one of the occupiers; and for the rest and last part of the time in the warren. — PER CURIAM: His settlement is in *E.*

If a house stand two-thirds in one parish, and one-third in another, a servant is settled in that in which she lodges.

S. C. Foley, 198.

390. *Feversham* v. *Gravenny*, *T. T.* 5 *G.* 1. *Fort.* 221. — A maid was hired for a year to a master, and served for a year. The house stood in two parishes. The master lay in the parish of *A.*, and all the service was done to the master in *A.*, but the maid lay in the parish of *B.*, in the same house. — THE COURT referred it to EYRE J. on the assizes; and he conferred with two other Judges, and all three were of opinion that she was settled in *B.* where she lay.

A servant hired for a year by a lodger in an extraparochial place, who goes with her mistress into an adjacent parish, merely on a visit, gains a settlement by serving the last 40 days in such parish.

S. C. Foley, 193. Stra. 524. Sett. & Rem. 103. 2 Sess. Cas. 103. 8 Mod. 50.

But see Rex *v.* Alton, *post*, 280. where it is said by Lord *Mansfield* that none of the reporters have stated this case accurately. But note, the report in *Barrow* is transcribed from the original record, in consequence of what fell from Lord *M.*

391. *Rex* v. *St. Peter's, Oxford*, *T. T.* 8 *G.* 1. *Burr. S. C.* 422. — The pauper, *N.*, was hired at *Christchurch*, an *extra-parochial place in Oxford*, on the 16th *May* 1717, for one year, to Mrs. *C.*, who then lived, and ever since hath lived with her son-in-law, Dr. *C.*, canon of *Christchurch College* aforesaid, as a *sojourner* or *boarder*; and continued in her service there till the month of —— in the same year; when Mrs. *C.* went upon *a visit* to her son, Mr. *F.*, in the parish of *Fawley*, where she continued three months upon the said visit, and *N.* with her in her service all the three months; at the end of which the mistress returned to *Christchurch*, and there the year's service expired, she having served her mistress the whole year in pursuance of the first hiring. The question was, Whether this *N.* gained any settlement in *Fawley Court*, by living with her mistress, who was only a visitor? — The whole Court were of opinion, that the settlement of the servant does not at all depend on the settlement of the mistress; for if a master or mistress hire a servant for a year, and afterwards remove from one parish to another during that year, it may be properly said that the servant is hired in every parish he shall go into with his master or mistress, and the parish where he lives with his master or mistress the last 40 days of his or her year, is the place of his or her settlement. — EYRE J. held, That if a man be hired in *Ireland* for a year, and afterwards come within the year, and live in *England* for the last 40 days with his master, that is sufficient to gain a settlement. — FORTESCUE J. said, The old law was, that the first night any person came into a town or parish he was called a stranger, the second night a sojourner, and the third night an inhabitant; and the order removing her from *St. P.* to *Fawley Court* was confirmed.

A service performed under a hiring for a year, in a different parish from that where the master dwells, gains a settlement there. S. C. Fort. 315.

392. *St. Peter's Oxford* v. *Chipping Wycomb*, *M. T.* 9 *G.* 1. 1 *Stra.* 528. — The master of the *Oxford* stage-coaches hired a servant for a year, to stay in an inn in *W.*, where the coach baited, to take care of the horses: he lived there for the whole year, but inasmuch as the master lived all the while in *O.*, the Sessions adjudged the settlement of the servant to be with him. — ET PER CURIAM: The order must be quashed, for the settlement is gained by the service, which was in *W.*

The service need not be performed at the place where

393. *Rex* v. *Whitechapel*, *E. T.* 11 *G.* 1. *MSS.* — The case stated, That the pauper was hired for five years at *W.* to work in a glass-house, and was to have 10*s.* a week; and to provide himself with diet, lodging, &c. It was insisted, that the meaning of

the statute was for menial servants; and that this man was not part of his master's family, and might have been removed, whereas a servant is not removable. — PER CURIAM: The act does not prescribe any terms to be observed between master and servant. In this case the hiring was different from the usual way, but he is still a servant. The act requires a hiring and service for a year only, but this is stronger, for five years, and service likewise ensued. If the pauper had never lodged 40 days in the parish the exception had been good. (a)

the servant lives.

S. C. Foley, 146. 2 Sess. Cas. 120. 8 Mod. 369.

394. *Rex* v. *Spitalfields*, *M. T.* 11 *G.* 1. *MSS.* — The pauper was hired in 1680 to serve for five years, which time he accordingly served in the parish of *A.*, but lodged the whole time in the parish of *B.* — BY THE COURT: He must be settled at *B.* because of his inhabitancy there. A man cannot be settled but where he inhabits: and although the word "inhabit" is not in the clause of settlements of servants, as it is in that of apprentices, yet it must be understood so, because every person that is settled any where must be settled as an inhabitant.

A servant who is hired in one parish, and serves in another, shall be settled where he serves the last 40 days.

S. C. 8 Mod. 309.

395. *Bishop's Hatfield* v. *St. Peter's*, *H. T.* 1 *G.* 1. EDITOR'S *MSS.* — The case stated, That the pauper, *H. L.*, was hired by *A.*, in the parish of *St. P.*'s, to serve him for one year in the capacity of *huntsman*. *A.* was an inhabitant of the parish of *St. Ann's*, *Soho*, and had no settlement, habitation, or place in *St. P.*'s, except his *dog-kennel*, but lived sometimes at his house in *W.*, and sometimes at his seat in *N.* The pauper boarded and lodged with *J. B.*, in the parish of *St. P.*'s, merely for the purpose of looking after his master's hounds. He served out the year in the parish of *St. P.'s*, where, though he was occasionally absent, he lived during the last 40 days of the year. These orders were removed into the Court of King's Bench; and MR. STRANGE, in support of the order of Sessions, contended, that a servant hired for a year could not gain a settlement by serving in a place in which his master had no settlement. — Mr. LACEY, in support of the original order of the two justices, cited the case of *St. Peter's*, *Oxford* v. *Chipping-Wycomb* (b), where the hiring was at one place and the service at another, and yet it was held that the pauper gained a settlement where the service was performed; and in the present case both the hiring and service were in *St. P.*'s. — THE COURT: The order of Sessions must be quashed; this case is exactly like that of *Chipping-Wycomb*. This man certainly gained a settlement in *St. P.*'s, though his master never lived there.

A servant gains a settlement where the last 40 days are served, although his master has no settlement in the parish.

S. C. Foley, 197. Str. 794. See Rex v. East Ilsley, *post*, pl. 402.

(a) *Ante*, pl. 393.

396. *Goring* v. *Moltsworth*, *E. T.* 4 *G.* 2. 1 *Bar. K. B.* 436. — The pauper had gained a settlement in the parish of *M.*; but afterwards let himself for a year, and served for that year, to two persons that were partners in a boat, in the parish of *G.* He did not live in the whole year 40 days in the parish of *G.*, but plied with the boat in divers other parishes. — THE COURT were of opinion, that it must be understood that the servant did not reside in this parish for 40 days in the whole at any different times within the year; and then they said, their opinion was, that this was not a good settlement.

A waterman's boy who serves a year by navigating a boat from *Goring* to *London*, will not gain a settlement unless he has lived 40 days in the parish.

S. C. Sett. & Rem. 219. 1 Sess. Cas. 418.

(a) In 8 Mod. 369. this case is wrongly reported. It appears by Foley, 138. that the order set forth that he lodged the whole time in *Whitechapel* except one month, and that the Court held him to be settled there.

A service with the executor of the master for the remainder of the year in a different parish from where the hiring for a year was made, is good; for the death of the master does not dissolve the contract; and the servant by such service gains a settlement in the second parish. S. C. 2 Stra. 1164.

And see Rex v. Stockland, *post*, pl. 568.

397. *Rex* v. *Ladock*, *E. T.* 15 *G.* 2. *Burr. S. C.* 179. — *J. R.* covenanted with *D. H.* to serve him for one year in *L.* for 4*l.* 10*s.* and served him, and received the year's wages of him. Upon the expiration of the year, *J. R.*, the pauper, made a new contract with his master, to serve him for another year, for the wages of 5*l.* 10*s.*; and in pursuance of the last-mentioned contract, served and lived with *H.*, in *L.*, till the time of *H.*'s death, which happened about half a year after the last-mentioned contract was made. Upon the death of the master, *W. H.*, of *St. E.*, the executor of *D. H.*, asked the pauper if he was willing to serve him (the executor) for the remainder of the said last-mentioned year, according to the bargain made between the testator and the said *J. R.*, which *J. R.* agreed to, and thereupon went with and served the executor in *St. E.* during the remainder of the year; and at the end of it received of *W. H.* some part of the wages that were due to him at the death of the testator, (who had paid some part himself to *R.*) and the executor also paid *R.* the residue of the year's wages contracted for with the testator. — LEE C. J. The first year's service with *D. H.* is not material to the present case: the question is, Whether he gained a settlement at *St. E.* by serving the executor? It is agreed, that where there is a proper hiring and service, the place of service for the last 40 days gives the settlement. The present question depends upon 8 & 9 *W.* 3. *c.* 30. § 4. *viz.* Whether it be a continuance for a year in the same service? The words of that act are, "Unless such person "shall continue and abide in the same service during the space "of one whole year." This case differs from that of *apprentices*; where the settlement is gained by service under the indenture. There has been no adjudged case of serving an executor of the master of a hired servant. But I do not know how to distinguish this case from that of *Solebury* v. *Ivinghoe* (*a*), where the servant served the assignee of the farm, and the Court considered it as a continuance of the service under a hiring for a year. So, in this case, the contract is continued by the executor: and the difference of persons cannot be more material in this case than it was in that: nor does the act of parliament require the service to be the same as to the place or person; but only a continuance of the same service. And this is a continuance of the same service, and not a new contract. Where there is a hiring for a year, and also a service for a year, they shall be joined together. I think this is the same service; *viz.* a hiring continued, like the case of *Solebury* v. *Ivinghoe*; with a difference only as to the person. — WRIGHT and DENNISON Js. concurred in his Lordship's opinion. They held it no new contract. The executor was the representative of the testator; and only asked the servant if he was willing to continue the former contract. The contract was not determined and dissolved by the death of the master. The servant was obliged to serve the executor; and the executor to pay him. (*b*) And they agreed that this, being the case of an executor, was a stronger case than that of *Solebury* v. *Ivinghoe*, where the second master was only assignee of the farm, a mere stranger.

(*a*) *Post*, pl. 414.

(*b*) Dalt. 129.

The 40 days' residence need not be 40 days together, for it

398. *Greenwich* v. *Longdon*, *M. T.* 18 *G.* 2. *Burr. S. C.* 243. — *H. W.*, the pauper, was the daughter of *G. W.*, deceased; who, in his lifetime, hired himself for a year and served a year as a

livery servant, at 7*l.* wages, to one *S.*, of the *William and Mary* yacht, who had a house and family at *G.*, and resided there when not absent on the King's service. *S.* made frequent voyages to and from *H.*, and *W.* always attended him in the same; but *W.* never was 40 days together at *G.*, though during his service he was there 40 days at different times. The Sessions adjudged that *W.* was settled in *G.*, under whose settlement *H. W.* derived hers; not having gained any in her own right. — The order of Sessions was affirmed.

is sufficient if he reside at different times 40 days during the year. Burr. S. C. 704. 731. Cald. 41. 143.

399. *Rex* v. *Croscombe*, *M. T.* 19 *G.* 2. *Burr. S. C.* 256. — *J. G.*, the pauper, was born in *C.*, and lived there with his parents till about 15; then hired himself, being single, to live with Dr. *L.*, as his servant, for a year, for 4*l.* and a livery; and accordingly lived with his master, in the liberty of *St. A.*, during that year, and had his wages and livery; and, without coming to any new agreement at all, continued with his master, in the liberty, about a quarter of a year longer. Then the master took a house above 10*l.* a year in the parish of *St. C.*, and with his family (*G.*, the pauper, being one) removed out of the said liberty into that house in the parish of *St. C.*, where *G.* continued to live with him about six months under the first contract, and was paid the same wages, in proportion to the time. — LEE C. J. observed, that the statute of 13 *Car.* 2. *c.* 12 § 1. authorizes the justices, upon complaint made by the churchwardens or overseers within 40 days, to remove the pauper to that parish which was his last place of settlement for 40 days, either as a native, householder, sojourner, apprentice, or servant; for, then, service for 40 days gained a servant a settlement. Then the 3 & 4 *W.* & *M. c.* 11. § 7. enacted, "That if any unmarried person, not having child or children, "shall be lawfully hired into any parish or town for one year, &c., "such service should gain a settlement." But this statute was doubtful upon the service; it being, that "such service" should gain a settlement, though no notice in writing should be delivered and published, as that act required. The 8 & 9 *W.* 3. *c.* 30. § 4. explained, therefore, the former act of 3 & 4 *W.* & *M.* by requiring that it shall be not only a hiring for a year, but also a service for a year, and a continuance in the same service during the year. "That no such person so hired as aforesaid shall be "adjudged or deemed to have a good settlement in any such "parish or township, unless such person shall continue and abide "in the same service during the space of one whole year." (*a*) The two considerations of a settlement gained in this way are, the benefit to the parish, and the labour of the person. It is contended that the pauper in the present case gained a settlement in *St. A.*'s; and that it shall not be destroyed by what followed. But I say, he has destroyed that settlement and gained a new one, by what he has done since; for it is certainly the same service; and the last 40 days of it make the settlement. And by gaining a latter settlement, he of course loses his former one. His Lordship said he could not distinguish it from the cases cited, of a hiring for a year and a service for a year; which is holden to gain a settlement, though the service be not under the same hiring: and he thought it quite indifferent in what parish the service was, since it was the same service. The three other Judges concurred, upon the same principles. — THE COURT, therefore, was una-

If, a quarter of a year after a hiring and service for a year, the master, and the servant as part of his family, remove into another parish, where the servant continues to serve six month without any new agreement, and under the original hiring in the first parish for a year, he gains a settlement in this second parish, where he served the last 40 days.

(*a*) See Foley's Poor Laws, 212, 213, 214., where this act of parliament and the history of it are well explained by Lord C. J. *Parker*, in the case of Silverton and Ashton.

nimous that the settlement of the pauper was in *St. C.*, where he served the last 40 days.

If a person be certificated to, and hired as a servant in the parish of A, and go with his master to Scarborough, or any other public places merely for the season, where, after residing 40 days, the year expires, and the servant applies to his master there to make a new agreement, but the master says, "It will be time enough when we return home," and the servant continues in the service, returns home with his master to the parish of A, and is there again hired for another year, at advanced wages, and serves the year accordingly, he does not gain any settlement at Scarborough by his 40 days' residence there. S. C. Burr. Sett. Cas. 418.

400. *Alton* v. *Elvetham*, *E. T.* 30 *G.* 2. EDITOR'S *MSS.* — The parish of *A.*, in 1722 gave a certificate with *R. C.* the father of *R. C.* junior, and *E.* the wife of the said *R. C.* senior, to the parish of *E.*, acknowledging them to be legally settled in the parish of *A.*: under this certificate *R. C.* the father and *E.* his wife went into the parish of *E.*, and dwelt there ever afterwards. *R. C.* junior was born at the parish of *E.*, after the certificate granted as aforesaid; and neither *C.* the father, nor *R. C.* junior, did any act to gain a settlement in *E.* *R. C.* junior, on the 29th of *August* 1734, was hired for a year, as a covenant servant, by Sir *Henry Calthorpe*, Knight of the Bath, in the parish of *E.* At the expiration of the year, he was hired again as a covenant-servant by Sir *H.* at *E.*, for another year, and served the second year out; but the last 40 days' service of the second year, which he lived with Sir *H.*, was in the parish of *S.*, in the county of *York*. He did not at the end of the second year quit the service of Sir *H.*: but at the expiration thereof, *viz.* on the 29th *August* 1736, applied to Sir *H.* to make a new agreement for another year; when Sir *H.* said, "It would be time enough when they returned "home to *E.*" Whereupon he continued on for about six weeks, until Sir *H.* returned back from *S.* to *E.*, when *C.* was again hired by Sir *H.*, for a third year, at advanced wages, and served the said third year out, in the parish of *E.*; and continued in the service of Sir *H.* for seven years more in *E.*, and his wages were advanced every year, by agreement between him and Sir *H. C.* After quitting Sir *H.*'s service, he married *Anne*, named in the order; by whom she had the four children also named in the said order, and now living. — The Sessions confirmed the original order; for that the parish of *A.* gave the certificate under which the said *R. C.* junior was born; and neither his father nor himself did any act whereby to gain a settlement in *E.* — This case was argued the last term, and the Court took time to consider of it; and this term LORD MANSFIELD C. J. delivered the resolution of the Court: The general question is, Whether this accidental service of 40 days at *S.* acquired a settlement to the servant? It is immaterial whether the master has or has not a settlement in the place where the service is; because that will not prevent the servant gaining a settlement; but the objection here is, Whether the 40 days at *S.* are to be considered barely as a continuation of the service at *E.* or a new *bonâ fide* service at *S.*? There are several cases where a servant, though locally absent, may yet be considered as continuing his service in the place to which he was hired. So if a servant be ill, and go to *Bath* by the consent of the master, that would be a continuation of the service. Therefore the consideration here is, of convenience and inconvenience, of justice and injustice; which will have great weight, unless there are authorities which stand in the way. I will consider this, first, under the circumstances of the case; then, secondly, I will consider the authorities. The general ground upon which this must be determined, if there are no authorities, is this: substantially, the master lived at *E.*; he hired his servant to be a servant there; the parish was jealous of the servant coming in there, and got a certificate from *A.* Sir *H.* happens to go to *S.*

as a sojourner for a particular purpose, and not as an inhabitant. When they are to make an agreement for a third year, they both consider themselves as absent from home. It would be perilous for these public places of resort if such a service were to gain a settlement. Besides, what fraud would be brought upon parishes, if settlements might be gained in this manner, when a parish trusts to certificates? Suppose a person in service has an accident upon the road by breaking a leg, and he stays 40 days at a place, shall that be a settlement? Suppose he stays 40 days with his master in a sea-port, being windbound, would that gain a settlement? The master's abode here is at *E.*, which I lay great stress on. The domicil, as the Civilians call it, of Sir *H.* was not at *S.* I shall next consider the authorities cited; the principal of which was the case of *St. Peter's in Oxford* v. *Fawley*. (*a*) The Court will pay regard to former determinations for the sake of certainty; but if an authority be single, and plainly productive of inconvenience, the Court will in such case over-rule it; the present authority, however, does not at all contradict the doctrine I have been laying down. This case was cited to show, that a passage or transitory residence might gain a settlement. I shall state the case as it is in *Strange;* where it is said, that in the case of *Rufford* it was not doubted but that hiring into an extra-parochial place would gain a settlement. And so *Powell* J. somewhere said, that if a servant was hired for a year in *Ireland*, and the service was performed here, it would gain a settlement. But here I cannot but observe, that it is a great pity that cases should get abroad under the sanction of great names, which being taken from notes that gentlemen have taken only for their own use, and not by any public officer appointed for that purpose, are incorrect often in the statement of them. The present case, as reported in *Strange*, is most certainly misreported. It is stated, that the pauper was hired for a year into *Christchurch*, without saying how or under what circumstances her mistress lived there; and that her mistress went upon a visit to *Fawley Court*. Now her mistress being a single woman, could not possibly have any abode in *C.* but as a visitor or friend. And it is farther said, that the only doubt was, whether the settlement gained at *C.* was superseded or not? That could not possibly be so. For she could by no means gain a settlement in *C.*, which was not only an extra-parochial place, but a single house only, having been once a monastery, being in nature of one of the King's palaces, which may be extra-parochial. I mention this to show the incorrectness of cases, which cannot be relied on. This case is also in *Foley*, 215. and *Cases of Settl.* 159. reported differently. But all of them together may serve to help us to the truth, and which, upon inquiry, I find to be this: Mrs. *Cooke*, the mistress of the servant, had two daughters; one married to Dr. *Clavering*, dean of *C.*; the other to Mr. *Freeman*, who lived at *F. C.* And she lived alternately with these two gentlemen, her sons-in-law; and was as much at *F. C.* as at *C.*, and, as I observed before, it was not possible the servant should be settled at *C.*; because it was an extra-parochial single house. This was, I think, the only material case cited at bar; but there is another which I have had mentioned to me, *Bishop's Hatfield* v. *St. Peter's in St. Alban's* (*a*); where a huntsman was hired by one Mr. *Arnold*, who lived some-

(*a*) *Ante*, pl. 391.

(*b*) *Ante*, pl. 395.

times in *Westminster*, and sometimes at *Northampton*, and the servant resided, where the hounds were kept, at *St. Alban's*; and the only question was, Whether the servant could acquire a settlement there by such service, as his master had none? And there was no doubt but he could; for he came exactly within the case of a stage-coachman, who was hired to serve at *Wycomb*, though the master lived at *Oxford*; where it was held, that the servant's settlement does not at all depend upon the master's. But that case was very different from the present; for the question was not, Whether there was a continuance of service with the master in *Westminster* or *Northampton*? but, whether he was settled by living in that place with the hounds? and the master, I suppose, might be probably a member of parliament; and might have a house to go to for hunting merely, which is a very common case in the neighbourhood of *London*. However, there is no precision in the case on which the Court can rely; and, upon the whole, I think it not at all inconsistent with our present resolution, which is, that in the present case the whole of the service was only a continuation of the service at *E.* However, I would have it observed in the present case, that I lay great stress on both the master and servant, considering *E.* as their home (*a*), as also upon the precedent and subsequent service, and upon the circumstances of the certificate. And the order of two justices, removing the paupers from *E.* to *A.*, together with the order of Sessions confirming it, was affirmed.

A sailor boy who hires himself for a year to the boatswain of the hulks which lie at *Chatham* in the river *Medway*, and serves for a year sometimes on board one hulk, and sometimes on board another, sleeping and being victualled therein, may, it seems, gain a settlement in that parish within which the hulk lies,

401. *Rex* v. *Friendsbury*, *T. T.* 9 *G.* 3. *Burr. S. C.* 644.—*J. B.*, when a boy, hired himself at 50*s. per annum*, for a year certain, to one *S.*, who was a boatswain of the *Chatham* hulk; and he continued in his master's service, under the same contract, and without any fresh hiring, for the space of 18 months. During all that time, *S.* the master, kept house and lived and resided at *Q.*, in *Kent*, with his family; but the pauper, during the first 12 months of his service, laid and victualled on board the *C.* hulk, in the river *Medway*, when laid at her moorings there; having the parishes of *C.* and *G.* on the east side of the river, and the parish of *F.* on the west side; but the hulk laid nearest to the parish of *C.* About six months before *B.* left the service of *S.*, the *C.* hulk went into *C.* dock to be repaired; and *B.* was, during that time, by the order of *S.*, removed and laid and was victualled on board the *Sterling Castle* hulk; which likewise laid in the river *M.*, having the parish of *G.* on the one side, and the parish of *F.* on the other; but the said hulk laid nearer, by a third of a cable's length, to *U. C.*, which is in the parish of *F.*, in *K.*, than it did to the parish of *G.* After *B.* had been on board the *S. C.* hulk about

(*a*) In the case of Rex *v.* Bath Easton, *post*, pl 408. it was determined that the pauper, who had been hired in the parish of *Bath Easton*, and who attended his master and his family to *Exmouth*, merely for the purpose of sea-bathing during the season, for more than 40 days, and was, after having served more than a year, discharged at *Exmouth* from his said service, was thereby settled at *Exmouth*, and the case distinguished from Rex *v.* Alton by the circumstances above stated. See also Rex *v.* St. Andrew, Holborn, H. 24 G. 3. Cald. 406., where Lord *Mansfield*, speaking of the case of Alton *v.* Elvetham, says, "There "were a variety of circumstances in "the case. *It settles no general princi-* "*ples at all*; and the fact of the ser- "vant being a certificated man, which "is a statutable disability, was a ma- "terial circumstance in the case."

five months, the *C.* hulk (of which *S.* his master still continued boatswain) came out of the dock, and the pauper returned on board of her, where he continued about a month; at the expiration of which time he quitted his master's service. These several hulks are always afloat, and swing round with the change of the tides; and the places where they laid were the homes of each of the vessels respectively.—THE COURT sent the case back to the Sessions to be restated, and to have the fact ascertained, "Whether the place where the *S. C.* hulk lay was within the parish of *F.* or not?" But it did not come before the Court again.

on board of which he so lives and serves, although his master has a residence in a different parish.

402. *Rex* v. *East Ilsley*, *M. T.* 12 *G.* 3. *Burr. S. C.* 722.—*J. A.* was hired at a place called *B. B.*, in *G.*, as a groom, for one year certain, to the Earl of *P.*, (who had then a seat at *W.*,) by one *T. B.*, then a servant to the earl, at the rate of 3*l.* 3*s.*, and a livery for the year, to look after the earl's running-horses, which then stood at *B.*'s at *B. B.* He lived the former part of that year at *B. B.*, and went from thence, with the horses, to the parish of *M.* in *S.*; where he staid the remainder of that year, within about 20 weeks: and received his year's wages. During all that year he was an attendant on the earl's running-horses, and never once was at *W.* during all that year. At the expiration of the year he was again hired, at *M.*, as a groom, for another year certain, to the Earl of *P.*, by one *J*, steward to the earl, at the rate of 6*l.* 6*s.*, and a livery, for that year; still to look after the earl's running-horses. He staid with the horses at *M.* for some short time; from whence he went, with the horses, to *W.*, where he staid about three weeks, and then went from thence to *E. I.* with the horses, where he remained about 10 weeks. He went with the horses to *Epsom* races, where he staid about 10 days. He then returned with the horses to *W.*, where he remained about three weeks. He then went from thence to *M.* with the horses, where he staid about 20 weeks; during which his second year expired; and he received that year's wages, and continued under that last hiring, in the capacity of a groom, and to attend the earl's running-horses, for another year, without making any fresh contract. He went from *M.* to *E. I.* with the horses, and continued with them there, at one *W. F.*'s, in the parish of *E. I.*, for the space of 10 months; when *W. F.* paid him his wages by the earl's orders; and thereupon he was discharged from the earl's service. During all the said three years he never served the earl in any other capacity but as a groom, to look after and ride the horses; and never was once at *W.* during the last year, nor ever gained any legal settlement afterward. The pauper did not serve the earl at *W.* for the space of 40 days together at any one time, but did serve him at other places for the space of 40 days together at one time, *E. I.* is a public place for exercising and training of running-horses, and the earl had not any house at *E. I.*, nor any estate there. The question was, Whether a groom, residing at a public place where his master had no house or estate, merely for the purpose of training race-horses, could gain a settlement in that public place?—THE COURT were unanimous that this was just the case of the huntsman mentioned in the case of Sir *Harry Calthorpe*'s servant, and that *A.* had gained a settlement in *E. I.*

A groom who is hired for a year gains a settlement by serving 40 days at a public place, to which he goes for the purpose of training his master's running horses, although the master has neither house nor land nor settlement in the place.

Ante, pl. 400.

A servant under a yearly hiring, who serves the last 40 days at *Exmouth*, to which place he had accompanied his master, who had gone there with his family, and lived in a hired house for the purpose of sea-bathing, gains a settlement at *Exmouth*.

403. *Rex* v. *Bath Easton*, *E. T.* 14 *G.* 3. *Burr. S. C.* 774. — The pauper, about the latter end of *August* 1763, was hired as a covenant servant, for a year, to the Rev. Mr. *R.*, who then resided at his house at *B. E.*, as his only place of general residence. He entered upon the service, and served the year and some months. He served the first part of the year at *B. E.*; but, about the latter end of *April* 1764, he attended Mr. *R.*, with the rest of his family, to *Exmouth*, where Mr. *R.* went for sea-bathing. Mr. *R.* hired by the week, at 14*s.* or 15*s.* by the week, the whole of a small lodging-house at *E.*, which belonged to an innkeeper, who kept it ready furnished, solely for the purpose of letting it to strangers; in which he staid for the space of 10 weeks; during the whole of which time the pauper served him there. Mr. *R.* then hired, by the week, lodgings in another house in *E.*; being obliged to quit the former on account of its being engaged to a lady and her niece from *L.*, who came to *E.* for the same purpose of sea-bathing. He staid at the last-mentioned lodgings, and the pauper with him, for the space of two months, except an absence of about three weeks on an excursion into *K.*, where the pauper attended him: after which he returned to *E.*, and the pauper with him, who continued in his service at *E.* till his master discharged him, just before his leaving that place, and returning to his said residence at *B. E.*; which was, when he gave up the lodging last-mentioned, at the expiration of the said space of two months. *E.* is a place generally resorted to by persons from *Exeter* and *L.* for sea-bathing; but merchants also resort to it from *Exeter* as to a village; just as merchants from *L.* resort to *G.* or *H.* It was in the nature of *B.*, but of inferior estimation. No physician resided at *E*, or nearer than *Exeter* which is 10 miles distant; the bathing accommodations were extremely good; there were balls there, and a card assembly once a fortnight. — LORD MANSFIELD delivered the unanimous opinion of the Court, that the pauper's settlement was at *E.* This was a common hiring for a year: there is nothing particular in it. And in the case of a common hiring for a year, a service with the master for a year gains a settlement to the servant in the place where the last 40 days of such service were performed. Here the service with the master for the last 40 days ended at *E.* There was no continuance of service with the master after the master's return to *B. E.* In the case of *Alton* v. *Elvetham* there (*a*) were many particular circumstances; the servant was born at *Elvetham*, under a certificate from *A.*; and could not gain a settlement there by his original hiring and service in that place; nor without a discontinuance of it, and a new subsequent hiring. But no such discontinuance ever happened in that case; the service did not end at *S.*; it continued. The servant at *S.* proposed a new agreement for another year; his master said, it would be time enough when they returned home to *Elvetham*. Whereupon the servant continued on, for about six weeks, until they returned to *Elvetham*; when he was again hired by his master for a third year, and served it out at *Elvetham*, and continued in his master's service for seven years more in *Elvetham*. (*b*) So that it was a continuation of the original hiring; the contract did not end at *S.* The question, therefore, in that case was, Whether serving his master, who resided at *S.* as a sojourner, for above 40 days, should gain the servant a settlement there, when his former hiring at *Elvetham* was

(*a*) *Ante*, pl. 400.

(*b*) Burr S. C. p. 419. 421. 424.

not discontinued nor ended at *S.*, but, on the contrary, continued and went on until and after their return to the master's general residence at *E.*? But that case does not lay it down generally, that no servants can gain settlements at places where people go to drink waters, though they serve their masters or mistresses there for 40 days. If it does, it is wrong; for no such general rule ought to be laid down. We are all of opinion, that this servant, who went with his master to this place, and served him there for the last 40 days of his service, which ended at this place, and was not at all continued at any further time or place, is legally settled there by serving the last 40 days at it. — WILLES J. strongly declared his assent to this opinion; and added, that he hoped that it would now be understood, that serving a master 40 days at a public place gains the servant a settlement at that public place.

If the residence of a servant be alternately in two parishes, but he does not continue for 40 successive days in either, but more than 40 days interruptedly in both, he shall gain a settlement in that parish in which he last served.

404. *Lowess* v. *Lanstephan*, *E. T.* 16 *G.* 3. *Burr. S. C.* 825. — *E. M.* was hired for a year to *J. W.* of *L.*, where his master occupied his own estate. He continued with his master in *L.* till some time before *St. Peter's-tide*, when his master and family removed to *Lowess*, in which parish his master rented another farm: he continued with his master in *Lowess* till the 16th of *January* following altogether, when his master with his family removed to *L.* The master, after his removal to *L.*, constantly resided there; but the pauper was sent by his master back to *Lowess*, to thresh, and look after his master's cattle. The pauper staid in *Lowess*, upon his master's business, two or three nights and days, and eat and lodged there; and then returned again to *L.* for two or three days, or a week at a time, and eat and lodged there; and then returned again to *Lowess* in like manner as aforesaid; and so continued *between* the said parishes to the end of his year, which was the 17th of *May* following. The pauper never continued 40 days together in either of the said parishes after the said 16th of *January*, but he lived and resided as aforesaid more than 40 days in the whole in each parish: he resided most part of the latter part of his service in *L.*, and lodged there the last night; and from thence went to *Lowess* in the morning, and took some cattle of his master's from thence to the *Hay-Fair*, where the pauper finished his service. — THE COURT held him to be last legally settled in *L.*

A servant sleeping with his wife without his master's knowledge out of the parish in which his master lives, gains a settlement there.

See Rex v. Castleton, *post*, pl. 526.

405. *Rex* v. *Hedsor*, *T. T.* 18 *G.* 3. *Cald.* 51. — *W. M.*, the pauper, being legally settled at *B.*, the place of his birth, about 10 years ago, then being unmarried, was hired to Lord *B.*, of the parish of *H.*, for a year, as a gardener, and served him there several years; about 95 days before the expiration of the fourth year's service, he married a woman of the parish of *L. M.*, and from the time of his marriage, and till the expiration of that year's service, he lodged with his wife in *L. M.* 40 nights, but not successively, and did not lodge 40 nights elsewhere from the time of his marriage till the expiration of the year in which he married. Lord *B.* had no property in *L. M.* The pauper did not see Lord *B.* within the year he married; he never asked his master's consent to be absent for the 40 nights in which he lodged at *L. M.*, or any part of it; nor did his master give any consent for such absence. It did not appear where he lodged the last night of that year in which he married, and which completed his service with Lord *B.* under the hiring and service for

a year. He never performed any service whatever in *L. M.* on account of Lord *B.*; but he continued to serve him several years after his marriage. — THE COURT were of opinion that the cases, and particularly the case of *Rex* v. *Castleton* had settled it; and the order of two justices, removing the pauper from *L. M.* to *H.*, together with the order of Sessions confirming it, were quashed. (*a*)

If a servant reside part of the year in one parish, and part in another, at different times and intervals, making, when added together, more than 40 days in each, his settlement is in the parish where he slept the last night.
R. C. Cald. 118.

406. *Rex* v. *Hulland*, *E. T.* 21 *G.* 3. *Dougl.* 657. — At *Whitsuntide* 1768, the pauper, who was a blacksmith, being then a single man, hired himself at *H.*, for a year, to one *J. C.*, blacksmith, who had a house and shop at *B.*, and another house and shop at *H.*, and who resided occasionally at each place, but whose family resided constantly at *B.* The pauper served the year. He worked at the shop at *H.*, and lay there five nights in the week during the year, except three weeks together in the latter end of *February* and the beginning of *March* 1769, and sometimes a night or two in the week besides, when he lay at *B.*; and on the *Saturday* and *Sunday* nights the year through he lay at *B.*, and never at *H.* on those nights. He never resided 40 days together in either place; but resided more than 40 days at each in the year, and the last two nights in the year he resided at *B.* — It was argued, that, where there is a mixed residence of this sort, the best rule is, to count backwards in each parish, and to establish the settlement where you first find 40 days. — On the other side it was insisted, that the principle of the determination in *Rex* v. *Lowess* (*b*) was, that the last night of the residence was to be connected with the former service in the same parish, and reckoned as one and the same; and that the decision did not proceed on the majority of time in the latter part of the year. — THE COURT were of opinion, that these modes of calculation were each of them equally proper, but that as the rule had been settled in *Rex* v. *Lowess*, it would be right to abide by it; and the order of two justices, removing the pauper from, *H.* to *B.*, was affirmed.

(*b*) *Ante*, pl. 404.

If there be an inhabitancy, under a hiring for a year, of 40 days, at any interval throughout the year, in any number of parishes, wherever the last

407. *Rex* v. *Iveston*, *E. T.* 23 *G.* 3. *Cald.* 288. — *J. E.*, at *Martinmas* 1752, was hired by *N.* as a collier, to serve them for one year from thenceforth. *K.* and *I.* are two separate townships in the parish of *L.*, and maintain their own respective poor. The pauper entered into the service accordingly, and served out the whole year: he resided at *K.* when he was so hired, and continued there till the *May-day* following, and then he married. About 14 days after his marriage he took a cottage in the township of *I.*, which is not far distant from *K.*; and without the privity

(*a*) Rex *v* Nympsfield H. T. 21 G. 3. Cald. 107. Lloyd was hired to Lord *Ducie*, and resided in the parish of *Woodchester*, at *Christmas* 1771, as a game-keeper: he lived the year in that service, and lay over the stables belonging to his Lordship's house; which stables, where some of the other men-servants lay, were in the parish of *Nympsfield*. At *Christmas* 1772 he received his year's wages, and continued in the same service under the said hiring till *Lady-day* 1773, when he quitted his service: in the month of *February* 1773 he married *Hannah*, his now wife, who resided with her father in the parish of *Avening*. The said *Lloyd* lay at *Avening* the greatest part of the last 80 days before the time of his quitting his said service, without the privity or consent of his Lordship, or knowledge of his house-steward; who said, had he known thereof he would certainly have acquainted his Lordship therewith. *Baldwin* had moved for a rule to quash these orders; and now *Clifford* admitting that he could not distinguish this case from that of Rex *v.* Hedsor; *per Curiam*, Rule absolute, and both orders quashed.

of his master removed thither from *K.* with his wife, where they continued above 40 days, and until about 14 days preceding the expiration of his service; and then they returned to *K.* — Two justices removed the pauper from *N.* to *I.*, and the Sessions confirmed the order. — THE COURT: Independent of authorities, the rule as it is recognised in *Rex* v. *Hulland*, seems to be agreeable to the construction of the act of parliament; for the service is not consummate till the last day; the servant shall therefore be settled in the place where he served when it was so completed. This case is similar in principle to that of *Rex* v. *Hulland* (*a*), and precisely that of *Rex* v. *Lowes.* (*b*) We have laid down the rule, and nothing is offered to impeach it, and we are all of opinion that it ought to be adhered to; and the orders were accordingly quashed. (*c*)

day's inhabitancy shall happen to be, such will *connect* with any prior inhabitancy in the course of the year; and if, throughout the year, the whole will amount to 40, in that place the settlement attaches.

408. *Rex* v. *St. Andrew's, Holborn, H. T.* 24 G. 3. EDITOR'S *MSS.* — This case was first brought before the Court in *T. T.* 23 G. 3. and then stated as follows: — The pauper, *W. M.*, his wife, and children, were removed from *St. A. H.*, to *A. juxta B.* The Sessions quashed the order, and stated, that the pauper *W. M.* was born in *A. juxta B.*; and, being settled there, about 1760 became a yearly hired servant to *S.*, an attorney in *Furnival's Inn*, with whom he lived about eight years. The usual place of *S.*'s residence was *F. I.*, but he used frequently to go to *B.* for his health, when the pauper always accompanied him. His stay, on those occasions, was sometimes for four or five months together. He was always in lodgings there, and generally on the *South Parade*, in the parish of *St. J.* in *B.* During the latter part of the eight years, that is, during the last three years, *S.* resided rather more at *B.* than at *F. I.*; and the last time the pauper was at *B.* with him, *S.* staid several months in his usual lodging on the *South Parade*. The pauper quitted *S.*'s service in *May* 1768, having resided about four months previous thereto, that is from the *Christmas* preceding, in *F. I.*; that *F. I.* is an extra-parochial place: and that the pauper has done no act to gain a settlement since he left *S.* A doubt arising on the argument, Whether a removal might not be made to *F. I.*? the case was sent to be re-stated, and now came back with this addition, That *F. I.* is no township or vill within the meaning of the 13 or 14 *Car.* 2. *c.* 12., and that no removal has ever been made to it. — SYLVESTER showed cause: and said, the birth settlement being

Where the last 40 days are served in a place where no settlement can be gained, the settlement is in the place where the preceding 40 days were served.
8. C. Cald. 405.

(*a*) *Ante*, pl. 406.
(*b*) *Ante*, pl. 404.
(*c*) The rule laid down in this and the preceding cases, was considered as *fully settled* in the case of Rex *v.* Great Bookham, T. T 26 G. 3. The pauper, *James Longhurst*, was born in the parish of *West Clandon*, in the county of *Surrey*. At *Michaelmas* 1784, he was hired a yearly servant to *Martin Richmond*, of the parish of *Fetcham*, farmer, at the yearly wages of 7*l.*; and he served the year out. He was single when hired; but married the *January* afterwards. He resided 40 days in the parish of *Fetcham* during his service, and before his marriage: but after his marriage he took a house in *Great Bookham*, and slept constantly with his wife in the parish of *Great Bookham*, during the remainder of his service, excepting the last night of his service; on which last night he slept at his master's in the parish of *Fetcham*: and the order of two justices removing the pauper from *Great Bookham* to *Fetcham* was affirmed without any cause being shown. See also Rex *v.* Sandford, T. T. 26 G. 3. 1786, 1 T. R. 281. and Rex *v.* Brighthelmstone, 5 T. R. 188.; and *post*, chap 9., where the same rule was observed, in the case of an apprentice. See also Rex *v.* Undermilbeck, *post*, pl. 409.

at *A.*, any subsequent settlement whatever would be sufficient to defeat this order of removal. It was therefore immaterial, whether the pauper's settlement should prove to be at *B.* or *F. I.*. But as it now appeared that *F. I.* was not such an extra-parochial place as a removal could be made to, it followed that the pauper had gained a settlement in *B.* It was now settled by *Rex* v. *Bath-Easton* (*a*), that such a service at a place of public resort was sufficient to gain a settlement, and it was no hardship on such places that it should be so held, because the burthen was compensated by the benefit they derived from the master's residence. It would be argued on the other side from the case of *Rex* v. *Alton* (*b*) commonly called the *Scarborough* case, that the service having ended in a place where no settlement could be gained, the prior service at other places was thereby done away, and no settlement at all gained by such service. But nothing was more clear, than that a settlement once gained could only be lost by another settlement. The master removing, in this case, before the end of the service, into an extra-parochial place, could not have any other effect on the settlement already gained by the service at *B.*, than if he had carried the pauper abroad with him, or had lived afterwards at 20 different places, but never 40 days at any one; in both which cases it would be admitted that the settlement at *B.* continued. The *Scarborough* case was to be considered as a determination founded on numerous and very particular circumstances; or, at most, as making an exception as to certificate-men, which was not to be carried farther. On the other hand, the case of *Rex* v. *St. Peter, Oxford* (*c*) was exactly like the present; for there the service began and ended in an extra-parochial place, and yet an intermediate service in another place was held to give a settlement. They also cited *Rex* v. *Petham* (*d*), where an apprentice to a certificate-man gained a settlement by serving in another parish under an assignment. — BEARCROFT, *contrà*, did not contend that no settlement could be gained at a watering-place; that point was decided in the *Bath-Easton* case, where it was expressly said, that the determination in the *Scarborough* case did not go at all on that circumstance. If, therefore, the *Scarborough* case did not determine that no settlement could be gained at watering-places, the point resolved in it must be, that the settlement was defeated by the last 40 days being served in a place where a settlement could not be gained. It is, therefore, precisely in point to the present case: for *S.* read *B.*; and for *E.* read *F. I.*; and it is impossible to distinguish the two cases. In both a settlement would have been gained at *S.* and *B.* if the service had ended there, but was not because the service was continued over to *E.* and to *F. I.* — BULLER J. having observed that they had compared this case very exactly to *Rex* v. *Alton*, desired them to compare it also to that of *St. Peter, Oxford.* They said, the case of *St. P., O.* was prior to and necessarily over-ruled by that of *A.*, which settled, that where the last 40 days where in a place where no settlement could be gained, no settlement was gained any where by that hiring and service. — LORD MANSFIELD: It now appears that *F. I.* is not a vill within the 13 & 14 *Car.* 2. *c.* 12. The hiring there lays the foundation for a settlement, but none can be gained there. You must look back to the last place, except *F. I.*, where 40 days were served; that place is *B.*, and

(*a*) *Ante*, pl. 403.

(*b*) *Ante*, pl. 317.

(*c*) *Ante*, pl. 268.

(*d*) *Post*, tit. "Settlement by Apprenticeship."

it being now settled that settlements may be gained at watering-places, the settlement was gained there notwithstanding the *Scarborough* case. Therefore the order of Sessions must be confirmed. — Order confirmed.

If a yearly servant serve 40 days in A, then 40 days in B, and afterwards returns to his father's house in A for the last three days of the year, with the master's consent, he is settled in A. (a)

409. *Rex* v. *Undermilbeck*, *M. T.* 34 *G.* 3. 5 *T. R.* 387. — *J. D.* the late husband of the pauper *A. D.*, and the father of the two children, was hired for a year with *J. B.*, then of *C.*, to work as a waller, the latter end of *March* or beginning of *April* 1783, for the wages of 10*l.* 10*s. per annum*. He entered upon his service accordingly, and continued with his master till about the middle of *December* following; when *B.*, having little to do in his business of a waller in the winter season, agreed with *D.* that he might have leave of absence for six weeks to work for himself wherever he pleased, allowing 15*s.* out of his yearly wages. *D.* then went away from his master to his father's house in *S.*, and continued there till the beginning of *February* 1784; being absent from his service seven weeks, one week longer than he had leave for. About that time *B.*, the master, contracted with one *J. B.*, that he and his servant *D.* would assist *J. B.* in making some fence-walls in the parish of *P.*; they accordingly entered upon their work, and *D.* continued with them above 40 days, the same being till within about three or four days of the end of the term for which he was hired, when he went away again to his father's house in *S.*, with his master's consent; and whilst he so continued in *S.*, the year's service with his master *B.* expired. During the time that *D.* worked at *P.*, he slept in the parish of *D.*, but never worked a day's work in the latter parish. When *D.* went the last time to his father's house in *S.*, it was on the *Saturday*, and his year's service would not have expired till the *Tuesday* following. On the *Monday* morning he went to make up some fence-wall on his father's account in *S.*, but was unable to proceed, owing to his being taken ill in the afternoon; and he continued out of health for some weeks afterwards. *D.* afterwards went to his master, who paid him his wages, deducting 15*s.* for the six weeks' absence, and 2*s.* 6*d.* for the week he was absent more than the six weeks agreed for. — LORD KENYON C. J. It has been properly admitted that the contract was not dissolved by the servant's absence for seven weeks, because the master consented to it, and received part of the servant's earnings; and, as the service continued, in contemplation of law, during the whole year, I think the servant was settled in *S.*, where he slept the last night, he having before that time served there 40 days in the course of the year. For it has been decided (*b*), after much argument, that the last day's service may be connected with any preceding service in the same parish, notwithstanding any intervening service elsewhere for 40 days.

The 40 days' residence necessary to confer a settlement by hiring and service, must be within the compass of a year.

410. *Rex* v. *Denham*, *H. T.* 53 *G.* 3. 1 *M.* & *S.* 221. — LORD ELLENBOROUGH C. J. in this case delivered the judgment of the Court. This was a settlement case upon a removal from *B.* to *D.*, and the question was upon the residence necessary to confer a settlement by hiring and service, Whether it was necessary there should be 40 days' residence within the compass of a year, or

(a) See the case of Rex v. Brighthelmstone, 5 T. R. 188. and *post*, title *Settlement by Apprenticeship*.

(b) *Vide* Rex v. Brighthelmstone, *post*, pl. 529.; and the cases there cited, and Rex v. Sutton, *post*. pl. 461.

whether, if the service were for several years uninterruptedly, a residence for 40 days within those several years would be sufficient? The facts were these. The pauper was hired to *G. S.* and served that year, at the expiration of which he was hired to him for another year, and served half of it, and during that year and a half he was resident in *B.* for 40 days; but he did not reside in *B.* for 40 days, either within the first year, or within the half year, nor (as was admitted) within any one period of a year whilst he continued with *S.* The Sessions were of opinion that this residence was not sufficient, and we think their opinion right. By stat. 13 & 14 *Car.* 2. *c.* 12. *s.* 1. poor persons coming to settle in any parish, if likely to be chargeable to the parish, may be removed within 40 days after they so come to settle as aforesaid; and it is under this act that 40 days' residence is required. By stat. 1 *Jac.* 2. *c.* 17. *s.* 3. the 40 days' continuance in a parish, intended by the stat. 13 & 14 *Car.* 2. to make a settlement, shall be accounted from the delivery of the notice in writing to one of the officers of the parish to which such poor person removes; which notice, by the stat. 3 & 4 *W.* & *M. c.* 11. *s.* 3, is to be read in the church the next *Lord's day*, and registered in the book kept for the poor's accounts. By the same stat. 3 & 4 *W.* & *M.*, *c.* 11. *s.* 7., if any unmarried person, not having child or children, shall be lawfully "hired into any parish or town for one year, "such service shall be adjudged a good settlement therein, though "no such notice in writing be delivered and published as aforesaid." And by stat. 8 & 9 *W.* 3. *c.* 30. *s.* 4. "No person, so hired as "aforesaid, shall be adjudged to have a good settlement in any "such parish or township, unless such person shall *continue and* "*abide* in the same service during the space of *one whole year*." Upon these clauses, settlements by hiring and service now stand. It has been decided that so as there is a hiring for a year, and service for a year, it is not necessary the whole of the service should be under the yearly hiring, but service not under a yearly hiring may be connected with service under a yearly hiring, and both services, if uninterrupted, may be taken into the account: but it has never been decided that residences beyond the compass of a year can be connected; and as the legislature, by requiring a hiring for a year, and a continuance and abiding in the same service during the space of one whole year, seem to have contemplated something which was not to be complete in less than a year, but was to be complete within that period, we think we abide most closely by the words, and give effect to the most probable intention of the legislature, by holding that the whole residence must be within the compass of a single year. Suppose the same service to continue uninterruptedly for 20 years, and the servant to sleep twice in every of such 20 years at the same inn in travelling, and be at that inn the last night of his service, would it be expedient and reasonable that an inquiry extending over so long a period of time at detached intervals should be gone into for the purpose of ascertaining the settlement of a pauper? What notice could the officers of that parish have had that he was come to settle there? And yet there his settlement would be, if we were to hold that residence for 40 days beyond the compass of a single year would do. We are, therefore, of opinion that a settlement in *B.* in this case was not established,

and that the order of removal and the order of Sessions, which proceeded upon the disallowing the settlement, should be confirmed.

411. *Rex* v. *Mildenhall*, *H. T.* 60 *G.* 3. & 1 *G.* 4. 3 *B.* & *A.* 374. — Two justices, by their order, dated 15th *January* 1819, removed *W. C.* and *S* his wife, from the parish of *M.*, in *S.*, to *N.*, *All Sts*, in *C.* The Sessions, on appeal, quashed the order, subject, &c. — On the 1st of *May* 1817, the pauper being a single man, let himself as a yearly servant to *R. B.*, of *M.*, in the county of *S.*, and entered into his service on the same day. The pauper was employed by his master every day from the commencement of his service up to the 5th of *April* 1818, to drive the mail-cart to and from *N.* and *M.* For this purpose he started every night from *M.* and arrived at *N.* at about 11 o'clock in the evening; and after delivering the bags, &c., which generally occupied about an hour, went to bed at an inn in *N.*, in a bed hired for him exclusively for a year, and paid for by his master. He slept until about four o'clock in the morning, when the mail-coach arrived at *N.* from *L.*, and the pauper used to get up and receive the *M.* mail-bags, and drive his cart back to *M.*, where he generally arrived about six o'clock. He then, after putting up his horse, &c., went to bed in a room provided for him in his master's house at *M.*, and slept two or three hours. He was employed during the rest of the day in *M.*, as his master chose, and sometimes, which was about eight or ten times in a month, he did not go to bed at all at *M.* He kept all his clothes, and took all his meals in his master's house, and the room and bed in which he there slept were exclusively appropriated to him, and he considered that *M.* was his home, but that he took his night's rest at *N.* He kept no clothes, nor any thing else, at *N.*, and other persons occasionally slept in the same room there with him. From the 5th of *April* 1818, until the following 1st of *May*, he never drove the mail-cart at all, but lived wholly in his master's service at *M.* On the 1st of *May* 1818, he quitted Mr. *B.*'s service. — PER CURIAM: Here the pauper was, by the nature of his service, compelled to wait a few hours in the middle of the night for the return of the mail. During that time he slept there; but that sleep was not his ordinary and sufficient rest, for, after he returned to his master's house at *M.*, he went to bed in his own room, which was there provided for his exclusive use. He did not, therefore, go to *N.* as to his place of rest, and unless that were so, he could gain no settlement there. Besides, it was for the respondents below to establish affirmatively a settlement in *N.*; and if that is left doubtful, the Court will not quash the order of Sessions. But here, in fact, *M.* appears to have been the place of rest of the pauper during his service. The order of Sessions is, therefore, right. — Order confirmed.

In settlement by hiring and service, the pauper is settled where his place of rest is; and, therefore, where a servant, who drove the mail cart, had a bed provided for him by the year at N., where he rested every night during four or five hours in the middle of the night, and afterwards returned back in the morning to his master's house at M., and usually went to bed in his own exclusive room for about two hours: Held, that his place of rest was in M., and that his settlement was there also.

412. *Rex* v. *Apethorpe*, *E. T.* 5 *G.* 4. 2 *B.* & *C.* 892. — Upon appeal against an order of two justices, for the removal of *H. S.* and *R.* his wife, from *A.*, in *N.*, to *S*, the Sessions quashed the order, &c. subject, &c. — The pauper, *H. S.*, being settled in *A.*, was hired about six years ago by a Mr. *G.*, of *B.*, for a year, to commence at *Old Michaelmas*, the whole of which service he performed in *B.*, sleeping also in that parish. Before the expiration of the year Mr. *G.* again hired the pauper from the following *Old Michaelmas* to the *New Michaelmas* suc-

Where a pauper served under a yearly contract in the parish of A, and was again hired in the same parish by the same master for a less period than a year

(there being no interruption of the service), and during the latter period removed with his master into the parish of B, and served him there: Held, that the pauper did not acquire a settlement in that parish, inasmuch as no part of his service there was under a yearly hiring.

ceeding. There was no interruption of the service; and t the second hiring the pauper served his master about half a in *B.*, and then removed with him to *S.*, in which latter paris finished his service under such second hiring, and slept the 40 nights in *S.* — BAYLEY J. I am of opinion that the ord Sessions is right. If the pauper gained any settlement in parish of *S.*, in this case, it would follow, that wherever there once a hiring for a year, and the pauper afterwards continued the master as a weekly servant for 20 years, and resided in 2 ferent parishes, he would be settled in the parish where he re for the last 40 days, although at that time he were not hired year. It appears to me that the case of *Rex* v. *Croscombe* (*a*) not bear upon the present case. There the pauper hired hi to live with Dr. *L.* as his servant for a year, for 4*l.* and a liv he did accordingly live with his master during that year, and out coming to any new agreement, continued with his mast the same parish about a quarter of a year longer. The m then removed to another parish, and the pauper continued to with him about six months in the latter parish upon the term the first contract, and was paid wages at the same rate. No that case, at the expiration of the first year, a new hiring year was fairly to be presumed, from the circumstance of pauper continuing in the same service without any alteratio the terms; and if the service in the last year was to be consid as a service under a renewed yearly hiring, that case does n all bear upon the present. That such was the ground upon w the Court proceeded in that case appears from what was sai *Willes* J. in delivering the judgment of the Court in *The Ki* *St. Giles, Reading* (*a*); "*The King* v. *Croscombe* does not a "because the Court presumed the continuance of the whole "tract." There being no authority, therefore, bearing upo subject, we must look to the words of the statute 3 & 4 *W.* *c.* 11. *s.* 7.: they are, "if any unmarried person, not having "or children, shall be lawfully hired into any parish or tow "one year, such service shall be adjudged and deemed a good "tlement *therein*." The word *therein* refers to the parish or into which the party has been hired for one year. The settle therefore, attaches to him in that parish or town where he ha character of a servant hired for a year. The 8 & 9 *W.* 3. *c* recites, "that doubts had arisen touching the settlement of "married persons, not having child or children, lawfully h "into any parish or town for one year;" and enacts, "tha "such person *hired as aforesaid* (*i.e.* lawfully hired into "parish for one year), shall be adjudged or deemed to have a "settlement in any such parish or township, unless such pe "shall continue and abide in the same service during the spac "one whole year." The latter statute, therefore, requires, in order to gain a settlement by the hiring and service mentio in the former statute (which was a hiring into that parish f year), the party should continue in the same service for the s of one whole year. The former statute requires, that the cont should be for a year, and that the service should be under contract of hiring there mentioned. The latter statute requi besides, that in order to gain a settlement, the service should tinue for a year. I am, therefore, of opinion, that a settle

(*a*) *Ante*, pl 399.

(*b*) *Ante*, pl. 376.

can be gained by hiring and service in that parish only where the party has the character of a servant hired for a year; and that being so, the pauper, in this case, did not gain any settlement in the parish of S., and, therefore, the order of Sessions is right. — HOLROYD J. The case of *Rex* v. *Croscombe* is distinguishable from the present, upon the grounds stated by my brother *Bayley*. In that case Lord C. J. *Lee*, certainly, gave an extrajudicial opinion, that the service in the second year need not be under any contract of hiring, provided it was a continuance of the same service; but when the state of the law, as it existed between the passing of the 3 & 4 *W. & M. c.* 11. and the 8 & 9 *W.* 3. *c.* 30., comes to be considered, I think it perfectly clear that that opinion cannot be supported. By the 13 & 14 *Car.* 2. *c.* 12. overseers were authorized to remove a pauper to a parish which was his last place of settlement for 40 days, either as a householder, &c. or as a servant. At that time, therefore, a service for 40 days conferred a settlement. The 3 & 4 *W. & M. c.* 11. *s.* 3. enacts, that the 40 days' continuance of any person in a parish or town, which then conferred a settlement, should be accounted from the publication of a notice in writing, which he should deliver to the churchwarden or overseer of the poor, and the latter was to cause it to be read publicly in church. Sect. 6. provided, that any person exercising an annual office in the parish during the year, should gain a settlement without having delivered such notice in writing; and sect. 7. enacted, that if any unmarried person, not having any child or children, should be lawfully hired into any parish or town for one year, such service should be adjudged and deemed a good settlement therein, although no notice in writing were delivered and published. Now, the words *such service* must refer to a service under the contract of hiring mentioned in the former part of the clause; and if that be so, this statute clearly required that the service should be under a contract of yearly hiring. The legislature in this statute seem to have considered the exercising of an annual office in the parish during the year, and the being hired into the parish for a year, as equivalent to the notice to the parish which was required by the former section. Inasmuch, however, as the exercising of the parochial office was not sufficient to give a settlement, unless it were exercised during the year, doubts were entertained whether the service under the contract of hiring should not also continue during a year. If the service for the year were not required by that statute, the contract of hiring for the year is the only circumstance from which the parish could be deemed to have had notice; and if so, it was essential that the contract should be made in the parish. But doubts being entertained whether service for a year was required, the 8 & 9 *W.* 3. *c.* 30. was passed. Sect. 4. recites, that doubts had arisen touching the settlement of persons unmarried, not having any child or children, lawfully *hired* into a parish or town for one year; and then enacts, that no such person *so hired as aforesaid* shall be deemed to have a good settlement in such parish or township, unless such person shall continue in the service during the space of one whole year. The latter statute did not intend to dispense with any thing required by the former, but to add another qualification to those already required to confer a settlement. The service spoken of in the latter statute is the same service that was

(there being no interruption of the service), and during the latter period removed with his master into the parish of B, and served him there: Held, that the pauper did not acquire a settlement in that parish, inasmuch as no part of his service there was under a yearly hiring.

(a) *Ante*, pl 399.

ceeding. There was no interruption of ... service under a ... hiring the pauper serv... ore, that in order to ... in *B.*, and then removed with h... of the service must be ... finished his service under ... that being so, there was no ... 40 nights in *S.* — BAYL... the order of Sessions must, ... Sessions is right. ... Sessions confirmed. ... parish of *S.*, in this ... 4 *B.* & *C.* 91.—*W. S.*, *M.* his ... once a hiring for ... removed by an order of two justices ... the master as a ... the county of *Suffolk*, to the parish of ... ferent parishes, ... and, upon appeal, the Sessions con- ... for the last 40 ... the opinion of this Court upon the ... year. It ap... *W. S.*, was hired by the Rev. *J. V.*, ... not bear u... 1807, for a year, and served the whole of ... to live wit... afterwards continued in Mr. *V.*'s under successive ... he did a... the 2d of *November* 1811, when the pauper ... out cor... hired by Mr. *V.* for another year. The pauper served ... the sa... parish of *St. P.*, in the city of *O.*, from the said ... ther... until the 14th *April* 1812. He then accom- ... wi... several other places till the 2d *November* 1812, when ... t... by Mr. *V.* for another year, and he travelled ... with his master till the 20th *December* 1812, on which day ... arrived at *F.*, in *Sussex*, the appellant parish, where they ... more than 40 days, and afterwards he accompanied his ... the said parish of *St. P.*, in the city of *O.*, where they ... from the 25th *February* up to the 2d *April* 1813, a ... 38 days, and on the 2d *April* 1813 left *O.* for *B.*, where ... continued until the 2d of *May* following (30 days), when ... parted by mutual consent. — ABBOTT C. J. The settlement ... pauper is clearly at *O.*; he was, undoubtedly, settled there ... the 2d of *April* 1813, having resided there more than 40 days ... the last year of his service, and gained no subsequent settlement. It is not necessary that the whole of the residence should be under the last year's hiring. — BAYLEY J. I think this point was, in effect, decided in *Rex* v. *Denham* (*a*), and *Rex* v. *Flambro'*, which was before the Court in 1819. It has never been decided that the 40 days' residence must be under the last year's hiring.—HOLROYD and LITTLEDALE Js. concurred. — Order of Sessions quashed.

(b) *Ante*, pl 410.

(a) *Ante*, pl 410.

XI. *Of Service with different Masters.*

A service under a hiring for a year, part performed with the original master, and the remainder with a stranger, to whom he had let his farm, is good service, if there be no dissolution of the original hiring. Fort. 317. See S. P. Rex v. Ladock, *ante*, pl. 397.

414. *Rex* v. *Ivinghoe*, *E. T.* 4 *G.* 1. *Str.* 90. — *N. Y.*, being settled in *C.*, was, at *Michaelmas* 1715, hired into the parish of *I.*, by *K.*, to serve him as a shepherd till *Michaelmas* following: he entered upon the service, and continued with *K.* till *Lady-day*, who then paid him half a year's wages, and left the farm to one *S.*, who entered and took all the stock and servants, and, in harvest-time, took *Y.* off from keeping sheep, and set him to harvest-work, for which he paid him 5*s.* extraordinary, and at the year's end paid him the other half year's wages: *K.*, when he left the farm, never told *Y.* he was no more his servant, nor were there any transactions between them two towards dissolving the contract: neither did *Y.* ever make any new contract with *S.* for the last half-year. — THE CHIEF JUSTICE: The statute requires two things; a hiring, and a continuance in *the same* service for a year. There can be no doubt but that in this case there is a complete and perfect hiring

for a year; but the question turns upon the service. Half of it was actually a service to *K.*, and the rest, in fact, was a service to *S.*; but there being no new contract with *S.*, nor any dissolution of the first contract with *K.*, it seems considerable, whether the whole shall not be taken to be a service to *K.* As, if I lend my servant to a neighbour a week, or any longer time, and he go accordingly, and do such things as my neighbour sets him about, yet all this while he is in my service, and may reasonably be said to be doing my business. If the first contract be not discharged, it must have a continuance, and under it the servant is entitled to demand his wages of the first master. And the *5s.* given him by *S.* is no argument to the contrary, no more than if, in the case I put before, my neighbour had given my servant a gratuity for his extraordinary trouble. What agreement there was between *K.* and *S.* does not appear, but here is no act done by the servant that shows his consent to change his master. And, therefore, I take this to be a service for the whole year, pursuant to the first contract, and, consequently, the settlement is at *I.*, where the service was. — POWYS J. The private reason that I went upon in *Rex* v. *Haughton* (*a*), where it was held that several hirings and services for 11 months gained no settlement, was, because, if we should once get out of the statute, there would be no end, and by the same reason that we abated one day we might abate two, *et sic in infinitum*. I think, in this case, the settlement is in *I.*—EYRE J. And so do I. This is a contract for a year between *K.* and *Y.*, and not to be dissolved during the year without both their consents. There is actually no consent on one side, and but an implied consent on the other. It weighs nothing with me that *S.* paid the last half-year's wages, for I look upon him only as a person to whom the servant was lent, and there is no doubt but that *Y.* might have demanded the wages of *K.* The paying the *5s.* is so far from being an argument that the contract was dissolved, that it is to me a strong evidence of its continuance; for when *S.* goes to set him about harvest-work, "No," says he, "I was hired to be a shepherd, and had small wages accordingly;" and thereupon the other agrees to give him *5s.* as an equivalent for the hardness of the work. — FORTESCUE J.: The difficulty arises upon the word *same*, which may extend to master, parish, and business. And taking it in those senses, this case comes within the words of the statute; and there can be no doubt but that it comes within the reason of it; for he is no more likely to be chargeable now, than if he had actually served *K.* all the year. Upon the reasons which have been given, I think, here is the same master, the same sort of service in the same parish, and a continuance of the contract throughout the whole.

(*a*) *Ante*, pl. 367.

See Rex *v.* Aynhoe, *ante*, pl. 368., the reasons on which the Court decided in this case.

415. *Rex* v. *Beccles*, *E. T.* 17 *G.* 2. *Burr. S. C.* 230.—*E.*, being settled at *B.*, let himself to *C.*, a blacksmith, in *L.*, at the wages of 3*l.* or 3*l.* 10*s.*, to serve him there for one whole year from *Michaelmas* to *Michaelmas*: he, accordingly, entered upon his service on the *Michaelmas-day*, and continued therein until the *Michaelmas* following: he then again let himself for another year to his said master, and continued about 10 weeks; when he and his master agreed to part, and actually did part. Within the year he worked, with his master's consent, for a week, with one *Lincoln*, as a journeyman blacksmith; and, with the like consent, with one *Lawes*, for a fortnight; and at some times, not exceeding 24 hours at any

A service with another person with the master's consent, is not a dissolution of the contract. S. C. Str. 1207. See *post*, "Settlement by Apprenticeship."

one time, nor above three days in the whole, within the said year, with his master's consent, went off to sea, in a fishing-boat belonging to *M.*; and it was agreed between the pauper and his master, at the time of such absence, that he, *E.*, should have all the wages he then earned, his master deducting, during the time of such absence, in proportion to his aforesaid wagers of 3*l.* or 3*l.* 10*s.*: *Lawes*, *Lincoln*, and *M.*, severally paid *E.* for the time he so worked with them; and he, *E.*, allowed *C.*, out of his said wages, for the time of his absence: *C.* received no part of the wages *E.* earned during his absence; but only deducted a proportional part of the wages of 3*l.* or 3*l.* 10*s.* — LEE C. J.: The whole absence of the present pauper in the first year was just three weeks and three days, by the consent of his master; and the money deducted out of his wages was to be in proportion to his absence. The parish of *L.* have had all that the words or the intention of the act of parliament require; for there was a clear hiring for a year, and, taking in the ten weeks of the second year, a service for more than a year. We cannot intend any thing of a fraud; for none is stated. The question depends upon two acts of parliament. (*a*) Upon the negative act (*b*), it is not necessary that the service be with the same person; it is sufficient if it be with the successor in the farm, or the assignee. Therefore this act has not been taken so strictly. Then the agreement about the payment of the wages as the servant might want, will not vitiate the contract. Nor will the contract be dissolved by any thing here stated. It is only a licence of departure for a certain time; the contract remains. Indeed where the servant departed, by consent of both parties, three weeks before the end of the term, the contract was dissolved; as in the case of *Pawlet* v. *Burnham*. (*c*) According to the cases that have been determined, the subsequent service of 10 weeks may be taken, in the present case. The service by the master's consent, with another person, was service of the master; it is not necessary that the service be with the same person; nay, if it had been without the master's consent, yet the absence had been dispensed with, by the master's receiving him again. This was no dissolution of the contract, but a mere lending of the service of his servant, than which nothing is more customary in harvest-time: and, by the unanimous opinion of the Court, the orders removing the pauper from *L.* to *B.* were quashed.

(*a*) *Vide* 3 & 4 W. & M. c. 11. 8 & 9 W. 3. c. 30.

(*b*) 8 & 9 W. 3. c. 30.

(*c*) See a MS. report of this case, *post*, pl. 424.

XII. *Of Marriage during Service.*

If a servant be hired for a year, his subsequent marriage does not dissolve the contract between master and servant, nor prevent him from serving out the year in order to gain a settlement.

416. *Farringdon* v. *Witty*, *E. T.* 1 *Ann. Salk.* 527. — A servant came into the parish of *S.*; was hired for a year; and having served half-a-year of the time, married a woman in the parish of *W.*; and the question was, first, Whether the justices, on complaint of the churchwardens, could make an order to remove him to the place of his last legal settlement? Secondly, Whether his serving here would not gain a settlement? To the first point it was admitted, that the contract between the master and servant was not dissolved by the marriage; and admitting it might be dissolved by an order made on complaint of the master, yet without that, and upon complaint of the officers only, it could not be dissolved; therefore BRODERICK (of counsel) admitted that the justices could not, in

the principal case, so remove him, as that he could not come to serve his master, but held he might be removed, so as that the order should disturb him, and prevent a settlement; and this he said was a medium that would neither prejudice the contract, nor evade the statute. He compared it to an order to remove on 14 *Car.* 2., before 40 days' stay; in which case, the very making of the order obstructed a settlement; and it may be executed after the 40 days.— HOLT C. J. and POWELL, *contrà*, That an order to disturb him, and not to remove him, was not within the meaning of the act: disturbing him, without power to remove, is vain; and this does not unsettle, nor is it like the case of 40 days. Secondly, It was questioned, whether such a stay, &c., would gain a settlement; because the statute makes the party's being unmarried a qualification as well as his stay, viz. "If any such person, being unmarried, being hired, &c., such service, &c.," so that the words "such service" go to all; not only the stay, but the state of the party.—To this POWELL inclined; HOLT C. J. *contrà*. "Such" is only *such service*; and the marriage does not hinder the service. The contract continues. Suppose the woman he marries be of the same parish, shall not that gain a settlement?

Marriage between the hiring and completion of the service is no impediment. S. P. determined in the same term between the parishes of St. Saviour and St. Dennis.

417. *Rex* v. *Clent*, *M. T.* 1 *G.* 1. *Foley*, 148.—It appeared upon the order of Sessions, that one *J. C.* was hired for a year in the parish of *E. L.*, being an unmarried man, for 3*l.* 10*s.* wages, about the month of *August*, and served for the said year; but that about the month of *February* then next following his said hiring, he was married, and continued after such his marriage, to the end of the said year, in his said service. Two justices removed this *J. C.* and his wife from *C.* to *E. L.*; but, upon appeal, the Sessions quashed that order, and stated the above case; and now THE COURT OF KING'S BENCH quashed the order of Sessions, and held, that the hiring for a year, and service for that whole year, though the pauper married before his year was out, gained him and his wife a settlement in *E. L.*

If a servant be unmarried at the time of the hiring, his marriage afterwards will not prevent his gaining a settlement, by serving the year.

418. *Rex* v. *Sutton*, *M. T.* 1 *G.* 2. 2 *Sess. Cas.* 133.—*J. S.*, being an unmarried person, and having no child or children, served *A. B.* from *March* 1725 to *March* 1726, and in *September* intermediate he married, and served out his year. The question was, Whether this was a good service to entitle him to a settlement? — THE COURT held it was good, and that to be unmarried at the time of the hiring is the only thing necessary in order to gain a settlement by the service, for that the service is not dissolved by the marriage.

A master cannot turn away a servant hired for a year on account of his having married during the service of such year.

419. *Rex* v. *Hanbury*, *T. T.* 26 & 27 *G.* 2. *Burr. S. C.* 322.— The pauper was hired for a year, from *Michaelmas* to *Michaelmas*; but he came three days after the former *Michaelmas*: staid one day after the latter; and was absent, at different times, near a fortnight, for which absence 6*s.* 6*d.* were abated in his wages. This service was in *T.* From thence he went to *H.*; where he was hired for a year, and served three quarters; and then married a woman with child. Of this his master complained to a justice of peace. The justice thought the matter complained of to be a sufficient cause for the pauper's being discharged; and allowed of his discharge; but made no order in writing touching the matter. The master thereupon discharged him, against the pauper's consent. — LEE C. J. said, the great question was upon the cause of discharge, Whether that was sufficient? — WRIGHT J. thought

there was not any reasonable cause; for what objection is the marriage? It is no misdemeanor; and the justice cannot discharge but for a misdemeanor.—DENNISON and FOSTER Js. He cannot be thus discharged against his own consent. Consequently, the settlement in *H.* goes on, and is his last legal settlement.

If a servant under a general hiring marry during the year, and serve 11 months, and then move into another parish, and continue to serve the same master, these services cannot be united, because at the commencement of the second year he was married and incapable of being hired.

420. *Rex* v. *St. Giles, Reading, T. T.* 13 *G.* 3. *Cald.* 54.—*D.*, being an unmarried man, on the 19th of *December* 1763, went into the service of *W.*, who then kept the *Bear Inn*, in *R.*, under a general hiring as a post-boy, and continued in that service in the parish of *St. M.* for the space of seven months, where he married his present wife, *E.* After his marriage he remained in his master's service in the said parish, for four months, when he took lodgings in the parish of *St. G.* in *R.*, and removed thither with his wife, where he slept for the space of seven months, continuing to serve his master for the whole of the said last-mentioned seven months, without coming to any new hiring, and so served him the space of 18 months in the whole, and then left his service.—WILLES J. delivered the judgment of the Court. This case depends upon the construction of the 3 *W.* & *M. c.* 11. § 7. The act was intended for the benefit of unmarried persons; and the principle of it is, that the parish that reaped the benefit of the labour of a man unencumbered with a family, ought to make a provision for that man, when disabled or incapable of working and providing for himself, but not for others from whom they had derived no benefit; that the burthens they were to be subjected to should be equal and correspondent, not unequal and disproportionate, to the benefits received from the pauper's labour. Then the 8 & 9 *W.* 3. *c.* 30. uses the very same words as the former statute; "unmarried persons not having child or children." The meaning of these acts is obvious; that the labour of one man shall not be sufficient to encounter a parish for the maintenance of a numerous family. As to the other ground, the law is, as has been determined this term in the case of *The King* v. *Hedsor*(*a*), and *The King* v. *Hanbury*(*b*), that marriage does not dissolve the contract if it happen during the year in which a man has been hired as a single man. To such only the benefit of the act was meant to be extended; and for this reason, that married persons ought to continue in the settlement acquired previous to their marriage. If there had been a residence of 40 days in the parish of *St. G.* at the end of the first year, the pauper would have been well settled there; it would have been within the case I have cited of *The King* v. *Hedsor*; but that is not the present case. The case of *The King* v. *Croscombe*(*c*) does not apply; 1. Because that was the case of a servant unmarried during the whole of the year. 2. Because the Court did there presume the continuance of the whole contract. Here the pauper was incapable of making a new contract at the commencement of the second year; presumption can go no further; and at that time he was a married man. In this case, suppose at the end of the first year a new agreement had been made between the master and servant; a service under that could not have given the pauper a settlement. Shall he then by an implied contract do that, which in express and direct terms he could not do? If the original hiring were constructively to be continued throughout the second year, it might last for 20 years; and parishes, on such a construction as is contended for in support

(*a*) *Ante*, pl. 405.
(*b*) *Ante*, pl. 419.
(*c*) *Ante*, pl. 398.

of these orders, might be burthened by retrospect with families from whose labour they had received no benefit.

421. *Rex* v. *Allendale*, *T. T.* 29 *G.* 3. 3 *T. R.* 382. — *D.* was hired for a year to serve *B.* at *A.* from *May-day* 1786 to *May-day* 1787 as a hind. It is the custom in that country to hire married men as hinds, because their wives are bound to perform certain services for the master in the time of harvest; and when the wife of a hind dies, he must hire a female servant to perform such services. It was in the contemplation of both the master and the servant, and perfectly understood by them, at the time of hiring, that the pauper would marry before he entered upon his service. After such hiring, and before the commencement of the service, he married, and entered upon his service a married man, and served out the whole year a married man at *A.* — THE COURT said the principle of this case had been settled by the case of *Farringdon* v. *Witty* (*a*), and the case of *Rex* v. *Bank Newton* (*b*), and held his settlement to be in *A.*

Marriage between the hiring and the commencement of the service does not alter the settlement.

(*a*) *Ante*, pl. 416.
(*b*) *Ante*, pl. 259.

XIII. *Of Absence from the Service.*

422. *Rex* v. *Hardingham*, *M. T.* 1 *Car.* 2, *Stiles*, 168. — An inhabitant dwelling in the parish of *B.* hired a maid servant for a year, and covenanted to give her 40 shillings for her wages, and received her into his service. The maid servant some time afterwards fell sick, in his service; and he thereupon turned her out of his service without giving her any thing. The maid, for necessity, in travelling from *B.* to *H.*, where her friends lived, and where she was born, was forced to beg for relief; whereupon she was sent as *a vagrant* to *H.*, where she was born. The vill of *H.* sent her back to *B.*, where she was entertained as a covenant-servant; whereupon they of *B.* procured an order of Sessions to settle her at *H.* The question was, Whether this was a good order or not? — ROLLE C. J. said, that there seemed to be fraudulency in the master, to make his servant a vagrant, so that he might be rid of her; but if one beg meat and drink for necessity, in passing between one town and another, this is not begging to make one a beggar within the statute. — THE COURT, therefore, ordered that the party should be settled at *B.*, where she was entertained for a covenant-servant, and not at *H.*, where she was born.

An absence created by the fault or contrivance of the master shall not impede a settlement.

423. *Rex* v. *Marlborough*, *T. T.* 12 *W.* 3. 12 *Mod.* 402. — An order was made by two justices for the removal of a servant-maid who was got with child within the year in her service. — And BY THE COURT, if one hire a maid for a year, and before the year's end she is got with child, she shall not for that be removed, but shall serve out her time; there shall be a year's continual service to make a legal settlement for the charging of a parish; but till the year be out, none shall disturb the party from serving; and since she is not removable within the year, if she leave her master without his consent, she may be sent back to her service; but then it is to serve her time, not as a charge to the parish. This, however, is good cause to discharge her of her service; and after her master has discharged her, she may then be removed. (*a*)

If a maid-servant be discharged before the end of the year, being with child, she gains no settlement. Cald. 11.

(*a*) This concluding sentence is not in the original report of this case, and appears to be added as the opinion of Mr. Bott himself: and on the authority of *Viner*, title "Removal," 459, to which he refers in the former edition

If master and servant part three weeks before the year expires, by *mutual consent*, the servant remitting wages for the three weeks, it is a dissolution of the contract.

S. C. Sett. & Rem. 84. 1 Sess. Cas. 87. Foley, 187. Cited, Burr. S. C. 69.

424. *Paulet* v. *Burnham*, *M. T.* 1 *G.* 1. EDITOR'S *MSS.* — Two justices removed *H. P.* and his wife from the parish of *P.* to the parish of *B.* The justices at Sessions on appeal being equal, the order was confirmed, and the following case stated: — The pauper, *H. P.*, lived with his brother *J. P.* as a covenant-servant for a year in the parish of *P.* After this service had completely expired, he quitted the parish of *P.*, and went and covenanted himself with one *R. A.* in the parish of *B.*, to serve him for a year; but three weeks before the expiration of the year, he departed from the service with his master's consent, and abated 6*s.* out of his wages for the remainder of the year. On these orders being removed into the Court of King's Bench, it was contended, that the absence from his service being by mutual consent, and not occasioned by any thing involuntary on the part of the servant, or by any fault on the part of the master, it was such a departure as rendered the service incomplete, and therefore that the orders settling him at *B.* should be quashed. On the other side it was urged, that as the case stated that he was a *covenant*-servant, which must be presumed to be *by deed*, he could not be discharged by a parol consent, and therefore he continued a hired servant during the year. — THE COURT. As to the purposes of settlement, there is certainly no difference between a covenant by deed, and an agreement by parol. If the hiring be by covenant, perhaps it is not to be destroyed by such consent, and an action may be maintained on it; but as to settlement, here is a clear discontinuance of the year's service. There is no fraud found, nor is there the appearance of any on the part of the master; and can he oblige his servant to gain a settlement *nolens volens*? The statute of 3 *W.* & *M. c.* 11. says, that he must serve for a year; now this man has not served for a year. — The order was accordingly quashed.

If a servant absent himself by reason of sickness, or to see his mother, with consent, or to seek another service, without the consent of his master, yet he gains a settlement if the master take him into service

425. *Rex* v. *Islip*, *E. T.* 7 *G.* 1. 1 *Str.* 423. — *W.* was hired for a year by *S. J.* into the parish of *I.*: during the year he was sick for six days, and incapable of doing any service: afterwards he went, without leave of his master, to see his mother, and staid away four days; and three days before his year was up, he asked leave of his master to go to a statute-fair to be hired, which the master refused; but the servant insisting he must go, the master replied, "I am resolved you shall gain no settlement in "this parish, and therefore if you will go, it shall be for good and "all." "No," says the other, "I will serve out the year;" and thereupon he went, and never returned during the last three days:

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of this work, it is only said, (from the authority of Shaw's Parish Law, 3d edit. c. 58. § 22), that in such case *a justice* upon complaint of *the master*, may discharge her; and not that there is any authority in a master so to discharge. This, however, is only an observation made by Mr. Shaw, and is omitted in the subsequent edition of his work; and in the case of an apprentice, it seems clear that the master may not discharge of his own accord; but must proceed under either the statute of 5 Eliz. c. 4. § 5. or the 20 G. 2. c. 19. But in the case of a female servant unmarried it is now determined that the master may turn her away, for this cause, Rex *v.* Brampton, *post*, pl. 444.; and by 35 G. 3. c. 101. all unmarried women with child are removable as paupers actually chargeable. See also Rex *v.* Welford, *post*, pl. 446., that a master may turn away a male servant who is the reputed father of a bastard child.

when he came to be paid, the master deducted for the time he was sick, and when he went to see his mother; which deductions the servant agreed to; and the master at the same time abated 6*d.* for the last three days, which the servant refused to allow; but the master refusing to pay it, the servant took the rest of his wages. — PRATT C. J. delivered the opinion of the Court. In this case there is no doubt but that there was a complete and perfect hiring for a year. The only question is, Whether there has been such a service in pursuance of it as will give a settlement to the party? Three objections have been made at the bar, which it will be proper to take notice of. First, That the servant being sick for six days, and incapable of serving, can never gain a settlement, which is to be acquired only by a service for a year; but here, say they, he did not serve for six days, and so there wants so much of a service for a year. This was lightly touched upon at the bar, and surely there is little in it. A servant that lies thus under the visitation of the hand of God which befalls him not through his own default, is, and must be taken to be, all the while in the service of his master: and if this exception were to be allowed, it might prevent all the settlements in the kingdom: it is not to be presumed, that the servant is less able to provide for himself at the year's end, because he has had a slight indisposition during the year; and that presumption of an ability is the foundation of making it a settlement. Secondly, It was objected, that his going to see his mother without leave was a desertion of the service, and that the time he staid away took so much off from a complete service for a year. As to that we are all of opinion, that it will not prevent the settlement. It was never the intent of the statute, that if a servant happen to stay out a night or two, it should avoid the settlement; but here, the master taking him again, has dispensed with his non-attendance, so there is nothing in that objection. Thirdly, The third, and, indeed, the most considerable objection was, that the going away three days before the year was up, and never returning again during the year, is a forfeiture of the settlement. Now, though that would, *primâ facie*, be a good objection, yet, as this case is circumstanced, we are of opinion it cannot prevail. Consider how the case stands with regard to the servant; he knew his master designed to part with him at the year's end, and therefore it was high time for him to look out for another place. To this end he applied in a very proper manner for leave to go to the statute-fair, which is a place where, in all likelihood, he might provide himself, and not be obliged to lie idle all the year, it being usual for people in the country to go thither to hire their servants; the master, like an unreasonable man, refused so reasonable a request, coupling it with a declaration, that the servant should gain no settlement with him, which is a badge of fraud on the side of the master that ought not to prevail. As, therefore, the request was reasonable, and upon a just ground on the side of the servant, and the refusal unreasonable on the side of the master, we think the servant's going afterwards without leave is no forfeiture of his former services; especially if we take in the declaration the servant made at that time, that he would serve out the year, and his refusal afterwards to allow the master 6*d.* for the last three days,

again before the year expires.

S. C. Sett. & Rem. 129. Foley, 262. Fortes. 305.

which plainly show that the contract was not dissolved before the end of the year, as was strongly insisted on at the bar. These are all the exceptions that were taken to this order. We are all of opinion that they are not sufficient to overthrow the settlement; and, consequently, that the Sessions have done right in sending him to *I.*

Turning a servant out of doors the day before the year expires, will not prevent a settlement.

426. *Eastland* v. *Westhorsley*, *T.T.* 8 *G.* 1. *Stra.* 526. — A servant was hired for a year, and the day before the year expired the master told him, that, to prevent his gaining a settlement in that parish, he should go away immediately; which the servant refused to do, insisting to serve out the year; whereupon the master turned him out of doors. — THE COURT held this to be such a fraud in the master as should not prevent the settlement of the servant.

If a servant quit before the end of the year, though without *compulsion* by the master, he gains no settlement.

427. *Sheen* v. *Godalming*, *M. T.* 10 *G.* 1. EDITOR'S *MSS.* — Two justices removed *F.* from the parish of *S.* to *G.* The Sessions, on appeal, quashed the order, and stated, That the pauper, *F.*, was hired for a year at *G.*, and served all that year, except one week, which he neglected to serve, on account that he and his master could not agree respecting the wages he should have for the ensuing year; that he therefore quitted his service, without any compulsion on the part of his master, a week before the year expired; but that his master paid him his wages for the whole year. — THE COURT held, that the words in the order, "without compulsion," were to be understood that he had quitted the service by mutual consent, and that therefore the service was interrupted, and that he had gained no settlement thereby in the parish of *G.* — The order of Sessions was affirmed. (*a*)

If an *absence* be procured by fraud, it will not avoid a settlement. Cald. 138. Burr. S. C. 69.

428. *Rex* v. *Preston*, *H. T.* 4 *G.* 2. EDITOR'S *MSS.* — Two justices removed the pauper from *D. A.* to *P.* The parish of *P.* appealed to the Sessions, where the order was confirmed, and the following case stated: — That *C. H.* was a legal inhabitant of the parish of *P.*; that afterwards he was hired for *a year* to *B. L.* of *B.*, and served the said *L.* under such hiring until five or six days before the end of the year; and would have served out the whole year, but that *J. H.* and one or two substantial householders of the parish of *B.* gave him 2*l.* 2*s.* to leave his said master and go out of the parish before his year was expired, on account of his having had banns of matrimony published in the church of the said parish, in order to his being married; that the said *C. H.*, upon his receiving the said 2*l.* 2*s.*, went to his master to receive his wages, but that his master insisted on deducting 9*s.* for the remainder of his year before he would let him go, and that he abated the same out of his wages, and then departed from his service; that the said 2*l.* 2*s.* were afterwards repaid to *J. H.* by the overseers of the parish of *B.*, and allowed to them in their accounts out of the poor's rate made for the said parish; but that it did not appear that the master of the said *C. H.* was privy to the payment of the 2*l.* 2*s.* until after *H.* was discharged from his service; and that he, the master, received no benefit from the 2*l.* 2*s.* being allowed out of the poor's rates, he not being rated to the poor of the parish of *B.* It was argued, on these orders being removed into the Court of King's Bench, that as the

(*a*) See Burr. S. C. 69., where it is said that this case was argued three times, and held to be no settlement.

Sessions had not found the fact of *fraud*, the Court would not, from any suspicious circumstance in the case, infer it; and the case of *Kempton* v. *Paul's Waldon* (*a*) was cited.—THE COURT: We certainly cannot intend that the fraud was practised upon this occasion; for fraud, being a matter of fact, must be specially found (*b*); but there cannot be a doubt but that this was done to avoid the settlement of this man in the parish. Upon the express words of the statute, however, it is clear that he could not gain a settlement, for the statute requires a year's service, and there certainly has not been a year's service in the present case. But it is immaterial to attend to this point of the case, for we are of opinion that though *G.* is in the margin of this order, yet as it does not in its recital say that *D. A.* is in the county of *G.*, or in the county *aforesaid*, it is not sufficiently set forth that *the parish* is within *the county*.

(*a*) *Post*, pl. 664.

(*b*) See accord. Rex. v. Prome Selwood, *ante*, pl. 437. Burr. S. C. 565. Rex v. Weston, *post*, pl. 989. Rex v. Haughton, *ante*, pl. 367. Rex v. Westmeon, *post*, pl. 447.

429. *Rex* v. *Eaton*, *T. T.* 8 & 9 *G.* 2. *Burr. S. C.* 47.—*D.* was hired as a servant to one *C.*, a settled inhabitant in *E.*, for a year, from *Martinmas* to *Martinmas*; and about the middle of the term, he absented himself from his master's service, without his consent, for about three weeks together: and then, upon the demand of his master, returned, and served out the remainder of the year at *E.*—PER CURIAM: The absence of the servant for the three weeks was purged by the master's receiving him again; for it ought to be considered in this case as a dispensation; and, in strictness of law, he still continued in the service of the master, notwithstanding such absence. And besides, if we were to be over-nice in services upon this statute, it would be attended with very great inconveniences; for a servant would not be able to go for two or three days to see his friends without running the risk of forfeiting his settlement; which would be too hard. (*b*)

An absence in the middle of the year, if the servant be received back before the year expire, does not prevent a settlement.

430. *Rex* v. *Castlechurch*, *M. T.* 9 *G.* 2. *Burr. S. C.* 68.—The pauper was hired for a year to *W. B.* in *C.*; and came to live with his master there on the 7th of *January* 1733, and continued with him till the day after *Christmas-day* following; and then went away by his master's consent, and took his clothes with him, and received his whole year's wages.—LORD HARDWICKE: I should think that this is not a good settlement. By 8 & 9 *W.* 3., which is an explanatory and declaratory law, with negative words, it is enacted, "that no such person so hired as aforesaid shall gain a "settlement without continuing in the same service during a whole "year." And we ought to take care that we do not carry the equity of construction so far as to overturn the meaning and intention of the act. It is a rule with respect to explanatory acts, not to carry equitable constructions too far, and beyond what the words will justify. The legislature has in this act expressly determined the time of the service: they require that it shall continue during the space of one whole year. In the cases cited it does not appear that the contract was determined. (*c*) But in this case, the facts are stated so as that, upon the whole, the contract was determined, and the pauper ceased to be a servant to the master. If so he could not be said to continue in the service during the 12 days

If a servant leave his service before the year is expired, and it expire during his absence, he thereby loses his settlement. Str. 1022. Cald. 95.

(*b*) *Vide* Rex. *v.* Ozleworth, *post*, pl. 432. Rex *v.* Hanbury, *post*, pl. 433. Rex *v.* Christchurch, *post*, pl. 436.

(*c*) Burnham *v.* Pawlet, *ante*, pl. 424. Sheen *v.* Godalming, *ante*, pl. 427. Rex *v.* Preston, *ante*, pl. 428. Rex *v.* Eaton, *ante*, pl. 429. Ivinghoe *v.* Solebury, *ante*, pl. 414. Pepperharrow *v.* Frencham, *ante*, pl. 341.

mentioned in the order; and consequently it was not a service for a whole year. The case of *Islip* is not an authority in the present case, because there was no determination of the contract; it being stated in the order, that the master refused to give the servant leave to go to the statute; and that the servant declared he would serve out his year, and refused to allow for the last three days. And the reason given by Lord C. J. *Pratt* for the opinion in that case, is a very good reason (*a*); and shows that the contract was not dissolved before the end of the year, and that the departure of the servant to seek out a new service was not in the servant a desertion of his service. Fraud infects every thing in these cases; but where there appears no fraud, we cannot intend it. If there be any fraud in this case, it seems to be in the master, in paying the servant his wages even for his absence. Too great a latitude in these cases may be very dangerous; because there will be no knowing where to stop. I think, upon the whole, that this is no good settlement; and that the orders ought to be quashed. The reasons upon which the Court has gone, in the cases cited, are not inconsistent with either the letter or intent of the act of parliament; because there the contract subsisted, no act having been done to determine it. — PAGE J. was of the same opinion. — PROBYN J. was of the same opinion. The consent of the master and servant cannot alter the express law. The case of *Islip* is not at all in point. There, the contract was not dissolved before the end of the year. — LEE J. This is a very clear case. It appears the servant went from his service before the year was out, and that the master consented to it; which is a plain determination of the service within the year. No fraud appears in the case: the paying the wages for the time of the servant's absence might be an act of benevolence in the master. The case of *Islip* differs from this case; because there was no determination of the service within the year. And the orders removing the pauper from *S.* to *C.*, were quashed.

(*a*) 1 Str. 424. and *ante*, pl. 425.

A hired servant three weeks before the end of the year goes, with his master's permission, to the herring-fishery, and provides a substitute to serve during his absence, and does not return until three weeks after the end of the year. This *absence* is no dissolution of the contract.

431. *Rex* v. *Goodnestone*, *T. T.* 19 *G.* 2. *Burr. S. C.* 251. — *M.* being settled in *G.*, unmarried, and without child or children, was hired by *J. W.*, of *N.*, to serve him from *Michaelmas* 1731 for a year, at 8*l.* a year: he lived with and served his said master in *N.* till within three weeks of *Michaelmas-day* following; when he asked his master to give him leave to go to the herring-fishery; and his master consented that he should go, if he could get a man to do his work to his (the master's) liking. *M.* accordingly procured one *G.* to do his work, and agreed to give him 5*s.* a week for the same, and paid him the said sum; and brought the said *G.* to his master, and his master approved of him; and *G.* did *W.*'s work in *N.* to the end of the year. *M.* went to sea, and returned at the end of the herring-fishery; which was about three weeks after *Michaelmas*: and what he earned at the fishery was for his own benefit. When he went to sea, his master paid him, on his request, 3*l.*, part of his wages; but paid him no more at that time, because he had then no occasion for more money; and when he returned, his master paid him 5*l.*, the residue of the wages left in his hands. And then *M.* made a new agreement to serve the said *W.*; and served him about three quarters of a year more, under the second contract. — LEE C. J. I cannot distinguish this case from that of *Beccles*; in which case, the absence

Str. 1232. Rex *v.* Westerleigh, *ante*, pl. 312. Rex *v.* Beccles, *ante*. pl. 415.

with the master's consent was holden not to vitiate or dissolve the contract. So in the case of *Islip*, it is plain the Court did not hold it to a scrupulous exactness, when there was a hiring for a year, though there were, in that case, many instances of absence; two were sickness; and the last was, by a liberal construction, looked upon as a just cause of going away; and, therefore, not a dissolution of the contract. In the present case, no dissolution of the contract is stated; and the master paid him his wages for the whole year. Here was leave given by the master, three weeks before *Michaelmas*, to be absent during the herring-fishery: and, in the mean time, he provided one to do his business, and received his whole year's wages. The rest of the Court concurred in opinion that the pauper had gained a settlement in *N*.

Absence on account of sickness is no dissolution of the contract. Rex v. Alveley, *post*, pl. 695.

432. *Rex* v. *Ozleworth*, *T. T.* 24 & 25 *G.* 2. *Burr. S. C.* 302. — *H.* agreed with *P.* of *W.*, clothworker, to serve him in the said business for three years, at 3*s.* a week for the first year, 3*s.* 6*d.* a week for the second year, and 4*s.* a week for the third year. He was to work only 12 hours in a day, and to have 1*d.* for every hour he should work above the 12 hours; and that *P.* should retain 6*d.* a week out of the above wages, during the said three years, by way of a deposit or security for *H.*'s performing his agreement; but which 6*d.* by the week was to be paid to *H.* at the end of the term, if he performed the agreement, or if *P.* should discharge him of the service before the end of the term; but was to be kept by *P.* if *H.* quitted the service before the end of the term; *P.* was not to find or provide meat, drink, washing, or lodging, for *H.* during the term; and it was understood between *P.* and *H.*, "that *P.* might turn *H.* out of his service at any "time during the term, paying the sixpences before retained." *H.* worked with *P.* under the agreement for about six months, and then, being ill, absented himself from the service for about three months; and then returned to and was received by *P.*, and continued to work for him under the agreement till the time of his being removed, being for about three quarters of a year after the return to *P.* During the time of his working with *P.*, and during his sickness, *H.* lodged in the parish of *W.*, but not in *P.*'s house. — THE COURT were of opinion, that this absence was no dissolution of the original contract.

A service, though not commenced till three days after the hiring, and interrupted by an absence of a fortnight without the master's consent, is a sufficient service, if the master confirm the contract by permitting a continuation of the service on his return.

433. *Rex* v. *Hanbury*, *T. T.* 26 & 27 *G.* 2. *Burr. S. C.* 322. — *A.* was hired for a year from *Michaelmas* to *Michaelmas*; he came three days after the former *Michaelmas*, and staid one day after the latter; and was absent, at different times, near a fortnight, for which absence 6*s.* 6*d.* were abated in his wages. This service was in *T.* From thence he went to *H.*; where he was hired for a year and served three quarters; and then married a woman with child. Of this his master complained to a justice of the peace. The justice thought the matter complained of to be a sufficient cause for the pauper's being discharged; and allowed of his discharge: but made no order in writing touching the matter. The master thereupon discharged him, against the pauper's consent. — THE COURT was of opinion, that *Rex* v. *Islip* (*a*) was in point, as to every thing but the difference of the three days being at the beginning; which does not make any real

(*a*) Rex v. Islip, *ante*, pl. 425. See also Rex v. Eaton, *ante*, pl. 429. Rex v. Castlechurch, *post*, pl. 436. Rex v. Beccles, *ante*, pl. 415.

S. C. Sayer, 100. Burr. S. C. 118. 326. Cald. 301.

difference at all; for service has not been taken strictly though hiring has, and the three days' absence at the beginning of his service was purged by the master's receiving him (*a*); and they were unanimously of opinion, that he was improperly discharged from the service, and that his last legal settlement was in *H.*

A servant, within three weeks of the end of the year, upon a dispute with his master, receives his wages, and is discharged with mutual consent; this is a dissolution of the contract, which cannot be restored by his being again received by the *master's wife* before the year expired.

434. *Rex* v. *Caverswall*, *E. T.* 31 *G.* 2. *Burr. S. C.* 461. — *B.* was hired for a year, and served a year, in *C.* He afterwards was hired for a year to *E. B.* of *T.*, at 5*l.* wages; and served him till within three weeks of the end of the year; when, on some disputes arising betwixt him and his master, he was, with his own consent, discharged from his service, and received all his wages except what was deducted for the three weeks. As soon as he left his service he went to *L.*, and was absent about a fortnight. Upon his return, at Mrs. *B.*'s request, (his master being then from home,) he went again into their service; and within a week after the expiration of the first year, his master hired him again for another year; and he served him, in *T.*, for about six months of that second year, and then left him. — LORD MANSFIELD: When the master gives leave, as in the fishery case, it is a continuance of the service: so where there has been both a hiring for a year and a service for a year, (though the original hiring was for less than a year,) and the service continues, it has not been required that the hiring for the whole year should be strictly reckoned from the first moment of the service, but it shall be considered as sufficient, that there were both a hiring for a year and a service for a year. In the case of *Fifehead* (*b*), the service was, in my apprehension, (and so Lord C. J. *Lee* and the rest of the Court also took it,) a continued service. But here was a chasm of a fortnight or three weeks; and the first contract was absolutely dissolved; and so continued for a fortnight or three weeks. Therefore, this last service cannot be connected with the former part of the year. For if a chasm of a fortnight or three weeks be not a discontinuance of the service, it will be hard to say what is. Therefore, I hold that there was no settlement gained in *T.* — DENNISON J. The true reason of the liberal construction of services for a year has been because the same service continued, whereas this case is the very reverse, it being expressly stated, that he was discharged; so that we cannot help taking it to be totally dissolved. Indeed, in the case of *Aynhoe* (*c*), and in that of *Brightwell* v. *Westhalley* (*d*), the Court (though, indeed, they were upon a construction rather strained, too) determined them upon the foot of the service continuing, whereas this service was totally at an end: therefore, he concurred. — FOSTER J. The case of *Fifehead* confirms the principle that the Court now go upon. There they did not consider so small an interruption as one hour, or thereabouts, as an entire dissolution of the contract. But here it is a total dissolution, and the two services cannot be connected. Therefore, he concurred; and, upon the same principle, that it ought to be a continued uninterrupted service. — WILMOT J. concurred. The cases of hiring for less than a whole year, and service (under such hiring) for part of a year, and then a second hiring for a whole year, and service for a part of it, is, indeed, within the words of the act, where the

(*b*) *Ante*, pl. 371.

(*b*) *Ante*, pl. 368.

(*c*) *Ante*, pl. 366.

(*a*) But see Hawkin *v.* Eastbrooke, Sayer's Rep. 115. that if a father covenant that his son shall not absent himself from his service without his master's leave, the master taking him again will not save the forfeiture.

whole service together amounts to one whole year. But here is both a dissolution of the contract, and also an end of the service; both within the first year; whereas, in the cases cited, the service continued. The case of *Fifehead* was only, as Lord C. J. *Lee* expressed it, a hesitation of the boy for an hour. Therefore, it is plain, that if Lord C. J. *Lee* had considered it as a dissolution of the contract, and an end of the service, he would have held the settlement to be bad. And it is much the best way to determine these cases upon the Poor Laws according to plain and common sense. For if once we go upon niceties of construction, we shall not know where to stop: for one nicety is made a foundation for another; and that other for a third; and so on, without end. Therefore, he concurred entirely with the rest of the Court; and upon the same principle (*a*), that it ought to be an uninterrupted continuance of the same service; or else, that the second service could never be connected with the former: and the orders removing the pauper from *T.* to *C.* were affirmed.

435. *Rex* v. *Nether Heyford*, *E. T.* 32 *G.* 2. *Burr. S.C.* 479.—*G.*, before *Michaelmas* 1756, was hired for one year to widow *B.* of *F.*, and continued in her service until five weeks before *Michaelmas* 1757; when, with his mistress's leave, he parted with her, and went to work with one *L.*, a farmer, at *K.*, and staid with him the said five weeks at *K.*: after *Michaelmas* 1757, he went to his mistress *B.* for his year's wages, the whole whereof she laid down to him, and he thereout voluntarily deducted 10*s.* for his five weeks' absence, being the same sum he had earned and received for his five weeks at *K.*: neither the original contract nor any new one, with his mistress *B.*, was dissolved or made, save as aforesaid: if his said mistress had, during the said five weeks, required him to return to her, he should have so done.—LORD MANSFIELD now delivered the resolution of the Court: The question turns singly upon this, Whether his absence for five weeks was a dissolution of the contract? If he had his mistress's leave, it was not; if he had it not, it was. And we are all of opinion, that it was only an absence with leave. For it appears that both parties considered the contract between them as *subsisting*, and not *dissolved*. He paid her the whole that he had earned in the five weeks that he was absent; that is, he voluntarily deducted it from the wages she laid down to him; considering himself as her servant during that time: for, otherwise, the deduction would not have been a deduction of the particular sum earned by him, but a deduction in proportion of his whole year's wages to the time of his absence. And he looked upon himself as liable to be called back within the five weeks. Therefore, it was only a leave to be absent for the whole time, or for part of the time, as she should call him back sooner or later. And as she did not call him back sooner, it was a leave for the whole five weeks. It is stated, that the man was willing to have returned within the five weeks, and would have so done, if his mistress had required him to do it. And the sum deducted was not proportioned to the time of his absence; which

A servant, five weeks before the end of the year, went with his mistress's leave to work in a different parish, and on receiving his year's wages after the year expired, he voluntarily returned the amount of the money he had earned during this absence. This, being an *absence with leave*, is no dissolution of the contract.

(*a*) This principle was also fully settled and established in Rex *v.* Croscombe, *ante*, pl. 399. The master, and the servant as part of his family, a quarter of a year after a hiring and service for a year, removed into another parish, where the servant continued for the remainder of the year; and the Court held that he gained a settlement by such hiring and service.

would have been the measure of deduction, if the contract had been considered by them as totally dissolved and at an end when he went away from her. But the paying her the exact sum that he had earned, shows that these five weeks' service was treated by them as a part of the service done to her. And it is stated, that the original contract was not dissolved, save as aforesaid. Therefore, upon the whole circumstances specially stated, we are all of opinion that the contract was not dissolved.

A servant, 17 days before the year expires, is removed from her master's house on account of her illness, and the next day receives her whole wages, but does not recover so as to return within the year. This absence is no dissolution of the contract.

436. *Rex* v. *Christchurch*, *E. T.* 33 *G.* 2. *Burr. S.C.* 494.—On the 24th of *August* 1757, *M.* was hired into the service of *G.*, of *C.*, for a year; and continued in such service there from that day till the 7th of *August* following; when she was frightened into fits, and thereby rendered incapable of doing any service: her master being taken very ill, and being disturbed by her fits, her mistress desired the sister of *M.* to go with *M.* to one Mr. *L.*'s, in the parish of *St. M.*, (where *M.*'s sister then lived as a servant,) and to request Mrs. *L.* to receive her into their house, that she might be there under the care of her sister; but if Mr. *L.* refused to admit her, she was then to bring her back to her master's house again: Mr. *L.* received her, and she resided there about five days, and then she was taken into the hospital; the day after she had been received into Mr. *L.*'s house, she returned to her master's house to fetch away her clothes, and her mistress gave her 2*s.*; which, with what she had before received, made up the full year's wages: no words of discharge passed between her and her mistress; but she looked upon herself as then discharged from her service, but believed, that had she recovered her health, her master would have received her again into his service. She continued under the same indisposition till after the year was expired, and never returned again into *G.*'s service; and on the 17th of *August* 1758, her master hired another servant in her place.—LORD MANSFIELD: This case is an additional proof, amongst many others, upon how inconvenient a foot the law of settlements stands. This must appear a very clear case to any person of common plain sense and understanding: it is certainly a fair *bonâ fide* service for a year, without any fraud on either side, either of the master or of the servant. If a master give his servant leave to go upon any other service, or to be absent for a short time, and pay him his whole wages, this is a fair *bonâ fide* service. If the servant be taken ill by the visitation of God, it is a condition incident to humanity, and is implied in all contracts. Therefore, the master is bound to provide for and take care of the servant so taken ill in his service (*a*); and cannot deduct wages in proportion to the continuance of the servant's sickness. Here the master requested Mrs. *L.* to take in his servant; the master himself being, at the same time, sick at home. Then she was afterwards sent to the hospital by her master's consent; and the master and mistress paid her her whole wages, and were satisfied with what was done. Can any one doubt of this being a service, *bonâ fide*, for a year? Being sent to an hospital by a kind master ought not to hurt the settlement of a servant visited by sickness. And I see no difference between such an accident of sickness happening in the

(*a*) In the case of Newby *v.* Wiltshire, E. 25 G. 3. B. R. the Court held, that an overseer cannot maintain an action against the master for money paid on account of chirurgical assistance, &c. for *his yearly* servant.

middle or happening at the end of the year; it is equally the act of God, and without any fault of the servant. — DENNISON J. concurred with his Lordship, that the illness of the servant happening at one part of the year or at another (being always the act of God), could make no sort of difference. And he was extremely clear that this act of God ought not to prevent the servant from gaining a settlement. And if, by the consent of the master, she be sent to a hospital, shall that alter the case, and make it different from her being kept at home in the master's own house? Surely not. She certainly does "continue and abide in the service" of her master; for "continuing and abiding in the service" means "not deserting it;" and she cannot be considered as having deserted her service. — FOSTER J. concurred. He said, that the relation between the master and servant certainly continued: it was not put an end to by this visitation of God. And he observed, that the sending her out of the master's house to Mr. *L.*'s, and afterwards to the hospital, was for the ease of the master, and for his own convenience. — WILMOT J. said, it was the clearest case that could be. The distinction between the servant's absence in the middle and at the end of the year, turns upon the absence in the middle of the year being purged by the master's receiving the servant again; which is not the case of an absence at the end of his year when he does not return. But with regard to the act of God, illness; it is just the same thing, whether that happens at the beginning, middle, or end of the year: the time makes no difference in the reason of the thing. And, in the present case, the servant being at Mr. *L.*'s, or in the hospital, is just the same thing as her being kept in the master's house, under his own roof.—And the order removing the pauper from *C.* to *St. M.* was quashed.

437. *Rex* v. *Frome Selwood*, *T. T.* 6 *G.* 3. *Burr. S. C.* 565. — *Stent* was hired for a year by *Prangley* at *King's Weston*, and served till within 10 days of the end of the year; when he declared to his master, that he did not wish to be settled in *K.'s W.* and asked his leave to go and visit his relations; to which the master consented. After the year was expired he returned to his master, and hired himself as a day-labourer; and he continued as such with him for about three months. Some time after his return he and *P.* made up their accounts, *S.* allowing for the days he had been absent the preceding year out of his daily wages. — THE COURT held *S.*'s settlement to be in *K.'s W.*, looking upon the leave and consent of the master as fraudulent, and a mere evasion of the settlement. (*a*)

A servant within 10 days of the end of the year quits his service, with his master's consent, for the purpose of avoiding a settlement in that parish. This is no dissolution of the contract. Cald. 133.

438. *Rex* v. *Maddington*, *H. T.* 11 *G.* 3. *Burr. S. C.* 675. — *Carter* was hired, three weeks before *Michaelmas*, to *Chandler* of *W.*, to serve him as a carter, for a year, from *Michaelmas* then next. About three days after *Michaelmas* he entered on his service, and continued in the same till about three weeks before the next *Michaelmas*; when, having been kicked by one of his master's horses, he went home to his friends at *S.*, without his master's knowledge, or asking his leave, to cure his leg; and continued there during the remainder of the year, and never returned to his master, except for his wages some short time after *Michaelmas*, when he was paid the whole, except 6*s.* which the master deducted on account of the absence; which the pauper

A servant having received a kick from one of his master's horses, left his service about three weeks before the end of the year, without his master's knowledge, and went to his friends to cure his leg,

(*a*) See Rex *v.* Milwich, *ante*, pl. 306.

and did not return within the year, but on receiving his wages, allowed his master for his absence. This departure is no dissolution of the contract.

consented to.—The judges were of opinion, that the servant gained a settlement by the service here stated; and they thought it to be within the reason of the determination of the *Islip* case. (*a*) Here, the cause of his going home to his friends clearly and fully appears to have been to cure his leg, which had been hurt in his master's service, and by a kick from his master's horse. This was a reasonable cause of absence; it did not dissolve the contract nor hinder his gaining a settlement. The abatement of part of his wages was unreasonable; the master ought not to have deducted any thing upon this account. It was not like running away or desertion of his service. It is sufficiently stated, that his going was grounded upon a reasonable cause, to get cured of his hurt. It is not indeed precisely stated, that it was absolutely necessary for him to go home to his friends for this purpose, or to continue with them so long as he did; but the justices had the whole evidence before them, and if it had been otherwise they would probably have stated it. Here was no fraud. We should lean in favour of settlements. Upon the whole, it seems to be a sufficient excuse, and within the principle of the *Islip* case.—And the order of two justices, removing the pauper from *M.* to *W.*, was affirmed.

(*a*) *Ante*, pl. 425.

An absence from service on holidays and *Sundays*, if that be the custom of the trade in which a servant is hired for a year, will not prevent a settlement.

439. *Rex* v. *St. Agnes*, *T. T.* 10 *G.* 3. EDITOR'S *MSS.*—*Nicholls*, when two years of age, went with his father (who was at that time settled at *Redruth*) into the parish of *St. Agnes*; and when he was about 15 or 16 years of age the father made a contract with one *Nankivell* (who then lived in the adjoining parish of *P.*) for his son to work at the said *N.*'s stamps, situate in the said parish of *St. A.*, (which stamps are mills wherein several labourers, men and boys, are employed in cleansing and manufacturing tin,) for one year, at the yearly wages of 5*l.* In pursuance of this contract, the said *Nicholls* served the said *Nankivell*, at his aforesaid stamps, for the said year, by working therein daily, except *holidays* and *Sundays*, according to the custom of tinners: and his father received his wages as he had occasion for it. But during the said year the said *Nicholls* ate, drank, and lodged, with his father in the said parish of *St. A.*; serving the said *Nankivell* at his stamps aforesaid, and in no other capacity; nor ever became a part of his family. At the expiration of the first year a like bargain was made for another year at 7*l.*, and a like service under it; and so on for another year: but during the said last two years also, said *Nicholls* served said *Nankivell* at said stamps, and in no other capacity, continuing to eat, drink, and lodge with his father, and never becoming any part of his master's family; and having *holidays* and *Sundays* at his own command during the three years, as is usual for persons hired in such employ.—THE SESSIONS ordered the paupers to be reconveyed from *Redruth* to *St. A.*, to be there provided for.—DUNNING objected, that *Nicholls* gained no settlement at *St. A.*, and obtained a rule to show cause why the order of Sessions should not be quashed, and the original order affirmed.—BURLAND now showed cause: He contended, that here was a hiring for a year, *without any exception*; and the service was according to the custom, and as is usual for persons hired in such employ. It is, therefore, a complete hiring and a complete service in *St. A.*; and the paupers are legally settled there. In the case of *Macclesfield* (*a*), the hiring was with an exception: here it was without

(*a*) *Ante*, pl. 308.

any. In the case of *King's Norton* (*a*), the pauper was holden to be settled at *Camden*, though she spun only by the stone. — DUNNING replied, that this is rather the case of a journeyman than of a hired servant. He was resident with his father: he was his own master, except as to performing the stipulated limited service at the stamps. He was only to do that particular service; the master had no right to employ him in any other; and *Sundays* and *holidays* were absolutely his own, without any control from the master. This contract is in effect the same as that in the *Macclesfield* case was. There the pauper was to be his own master, and at his own liberty the whole *Sunday*, and all the rest of the other days except the 11 hours: whereas the act of 3 & 4 *W. & M. c.* 11. intends only such services where the servant is under the command and control of the master during the whole year. The present case is exactly like that case; and in this case the exception must have been equally understood at the time of the hiring, though not particularly expressed. — THE WHOLE COURT were unanimous that *Nicholls* gained a settlement in *St. A.* They held this to be *an entire contract for a year, without any exception contained in it;* and the service was according to the custom of the country. And they made a distinction between the exception's being part of the original contract, and its not being so: the question turns upon this distinction. In the case of *Macclesfield* it was part of the original contract; here it is not so. And they mentioned the case of *Bishop's Hatfield.* (*b*) — Rule discharged, and order of Sessions affirmed.

(*a*) *Ante*, pl. 305.

On a hiring from *Michaelmas* to *Michaelmas*, if the servant say he cannot come till the day after *Michaelmas-day*, and the master say he will *shift* for himself, this is a permission of absence, and if he continue his service till the day before the ensuing *Michaelmas-day*, and then quit, by leave from his master, it is a good service of the year.

440. *Rex* v. *Bray*, *T. T.* 11 *G.* 3. *Burr. S. C.* 682. — On *Thursday* before *Michaelmas-day* 1767, *J. Hunt* was hired for a year to *Lee*, of the parish of *Bray*, farmer, as a carter, to go into his service on the *Monday* following, until *Michaelmas* 1768, for 6*l.* 6*s.*: at the time of the agreement *Lee* desired him to go into his service before *Monday;* but *H.* said, It would not suit him, as he was then in service: and *L.* replied, that if he would come into his service on the said *Monday* morning, he would shift till that time: he went into his service on the *Monday* accordingly; *Michaelmas-day* was on the *Saturday* next after the *Thursday* on which he made the agreement: at the time of the agreement the pauper was in the service of *Lewis* of *South Stock*, under a contract which expired on *Michaelmas-day* 1767; which service he left on the night of the *Michaelmas-day* 1767; he continued in the service of *L.* till the day before *Michaelmas-day* 1768; when he desired leave of his master to go to see his relations, before he went to another service: his master deducted 1*s.* from his wages for that day, and paid him the residue: he then went away, and returned no more into the service of *L.;* who, on the pauper's going away, told him, that if he quitted the service before *Michaelmas-day*, there might be a dispute about his settlement; and desired him to come back. — LORD MANSFIELD: This is a hiring for a year, with a dispensation of the first day. The pauper thought he had his master's leave the last day, and had allowed 1*s.* for it; which is more than one day's wages. Both master and servant were clear, that at the end of the year there was only an absence of one day; and at the beginning of the year the pauper had his master's leave for being absent the first day. But master and servant meant it as a settlement. And

(*b*) *Ante*, pl. 307. *Vide* also Rex *v.* Buckland Denham, *ante*, pl. 311.

the orders removing the pauper from *Sherfield* to *Bray* were affirmed.

If a servant serve his master for six months, and, on being *paid his wages*, go away for a fortnight, it is a dissolution of the contract, though on his return he is again received without any new agreement, and serves for seven months more; the additional month being in compensation of his former absence.

441. *Rex* v. *Ross*, *T. T.* 11 *G.* 3. *Burr. S. C.* 688.—*T. C.* hired himself for a year to *E. M.*, and served him, in *L.*, only three days. A difference arising between them about the business the pauper was employed in, *M.* bid the pauper go about his business. On which the pauper immediately ran away, and quitted his service; and hired himself to *J. W.* for a year, at 55*s.* a year wages, and served *W.* for six months in *Whitchurch*. *M.* then insisted on *W.*'s not keeping the pauper in his service. *W.* paid the pauper his wages to that time; and the pauper quitted that service, and went one or two voyages up the river *Wye*, as a labourer to a barge-master, for a fortnight; then, at *W.*'s request, and *M*'s consent, returned into *W.*'s service, without coming to any new agreement, or any mention of wages. He continued in *W.*'s service in *Whitchurch* seven months, being a month over the end of the year for which he was hired, in order to make out his lost time; and then received his wages, his master deducting 7*s.* 6*d.* for the breaking of a plough. —LORD MANSFIELD: Here is an absolute dissolution of the contract, by both master and servant, at the end of six months, whereas the statute requires a continuance in the same service for a whole year. The new service cannot be connected with the old hiring.—ASTON J. concurred; and the order, removing the pauper from *Whitchurch* to *R.*, was affirmed.

A servant the day before the year expires desires his master to discharge him, that he may have a day with his friends before he went to another master, to whom he had hired himself. To this the master consents, and the servant is discharged. This is an absence with leave, and no dissolution of the contract.

442. *Rex* v. *Potter Heigham*, *T. T.* 11 *G.* 3. *Burr. S. C.* 690.—*W.* was hired for a year from *Michaelmas* 1764 to *Michaelmas* 1765, by *T.*, of *S. W.*; he entered upon the service, and continued therein until the day before the end of the year; when he desired his master to discharge him, telling him, as he had let himself for the next year to a person in a distant place, and was removing further from his friends, he wished to go and see them, and pass that day with them; and requested to have that time to himself, to spend with them; and to which the master consented; and he was, accordingly, discharged, and then received the whole of his wages save 6*d.*, which he allowed to his master for that day. The question was, Whether *W.* did not gain a settlement in *S. W.*? —THE COURT held, that it was not a dissolution of the contract, but an absence by leave of the master; and the orders, removing the pauper from *L.* to *P. H.* were quashed.

Rex *v.* Thistleton, *post.* pl. 462.

A footman, two months before his year expired, married a maid-servant in the family who had given warning to quit, but was desired by her master to stay till a future day, preceding the expiration of her husband's year: on which day she quitted her service, and the footman, at

443. *Rex* v. *Richmond*, *E. T.* 13 *G.* 3. *Burr. S. C.* 740.—*S.* was hired by the year to *C.*, of *R.*, on the 30th of *October* 1769; and on the 4th of *September* 1770, married a fellow-servant. The wife had given a month's warning, in *August* preceding, to quit the service; and was to quit it in *September*, in consequence of such warning; but was desired by her master to stay till the 17th of *October*, which she did; and then the master said to *S.* (the husband), that he supposed, as his wife was going away, he (the husband) would like to do so too. The husband replied, he would like it better, if it was agreeable to his master. His master said, he had no objection, as he had another footman coming; and would pay him his whole year's wages: which he accordingly did, on the 17th, in full to the 30th. On which said 17th of *October*, both the husband and wife left the service; and the new footman came in the husband's place, on the said 17th of

October, at night. — LORD MANSFIELD: There is no necessity of an actual service upon every day of the year. The master can always dispense with it: he can give leave of absence. Nay, if the servant is absent without leave, in the middle part of his year, such absence may be purged, as it has been termed, by the master receiving him again; that is, the subsequent consent of the master ratifies the act done, and is given with a retrospect. I am clearly of opinion, that the servant has, in the present case, sufficiently served his whole year. The master voluntarily gave him leave of absence for the last 13 days; and of his own accord paid him the whole year's wages. — ASTON J. concurred; and added, that there is no difference between the end and the middle of a year; where the master only gives leave of absence, which is not stipulated for in the original contract. Indeed, where the absence is stipulated for in the original contract, and made part of the original contract, as an exception out of the service, the case is then of a different kind; as in the case of *Rex* v. *Hatfield* (*a*), where a hiring for one year, to wit, from *Michaelmas* to *Michaelmas*, with liberty to let himself for the harvest-month to any other person, was determined not to be a hiring for a year. A part of the year was there excepted out of the original contract; it was, therefore, only a hiring for the other 11 months. If the servant go away in the middle of the year, and return again, and the master receive him again, the master's taking him again purges, as it is called, the absence, though the servant had not his previous leave for it; and shows the master's consent to it, though given subsequently. Here the whole year's wages were voluntarily paid by the master quite up to the end of the year; which confirms the master's acquiescence and approbation. — ASHHURST J. concurred; and particularly repeated, that the master's offering and paying the whole year's wages was a proof of his consent.

his master's proposal, went away with her, which was 13 days before his time. This was no dissolution of the contract.

(*a*) *Ante*, pl. 395.

444. *Rex* v. *Brampton*, *H. T.* 17 *G.* 3. *Cald.* 11. — *W.* hired herself to *L.*, of *E.*, for a year, and served under that hiring till within three weeks of the end of the year; when her master, discovering her to be with child, turned her away, and paid her her year's wages, and half a crown over. — LORD MANSFIELD: The question is, Was this contract dissolved within the year? The answer depends upon this: Has the master done right or wrong in discharging his servant for this cause? I think he did not do wrong. The marginal note cited from *Viner* (*b*), whatever degree of authority it may be entitled to, is well warranted in principle. If the master agree to the contract's going on, the overseers, it is true, shall not take her away, because she is with child; but shall the master, therefore, be bound to keep her in his house (*c*)? To do so would be *contra bonos mores*; and in a family where there are young persons, both scandalous and dangerous. Where a servant's absence is said to be *purged* (which is an improper expression), by receiving him again, the receiving only explains and shows the nature of the absence; the consequence of it, indeed, is, that such reception must generally be considered as amounting to a dispensation, and thereby subjects the master to the payment of the whole wages. But the effect of a positive act of the master, that is, the dismission of his servant under a criminal charge, shall never be done away by an implication arising from the payment of his whole wages.

The service as well as the hiring must be for a year; and, therefore, if a maid-servant be turned away three weeks before the end of the year, for being with child, she gains no settlement by such service, though her whole wages are paid.

Rex *v.* Alveley, *post*, pl. 695.

(*b*) See *ante*, pl. 423 n.

(*c*) See Rex *v.* Welford, *post*, pl. 446.

If a master, a week before the expiration of the year, is obliged, from unforeseen circumstances, to break up housekeeping, and, in consequence thereof, dismisses his servant, paying her the full wages to the end of the year, this is a dispensation with the service, and the servant by such hiring and service gains a settlement.

But see Rex v. Bray, *post*, pl. 476.

445. *Rex* v. *St. Bartholomew, Cornhill, E. T.* 18 *G.* 3. *Cald.* 48. —*U. O.* was hired by the year to *H.*, in the parish of *St. B.*, on the 11th of *June* 1771. In the month of *April* following, *H.* went to *M.*, and purchased a manufactory there, and upon his return, in the same month, he told all his servants that he was going to reside at *M.*, but did not mention any time; and that they might look out for other services if they chose, or they might stay with him till he went to *M.*: *U. O.* did not look out for any other service, but continued with her master till the 4th day of *June* following; on the evening of which day her master paid her the whole year's wages, and gave her 10*s.* 6*d.* over, and the same evening left *L.* and went for *M.*: *H.* did not know in the morning of the 4th of *June* that he should leave *L.* in the evening, or even before the expiration of the year's service: but his going was quite a casual matter, and depended upon circumstances which he could not at that time foresee; but if he had remained in *L.*, he would have continued the pauper in his service, as she was a good servant: the pauper went into a new service two days after her master left *L.*—LORD MANSFIELD: The only question is, Whether the servant continued *bonâ fide* in her service during the whole year? To be sure there is a distinction between *exceptions from the contract* and *dispensations of the service*; but if the case be of the latter description, and *bonâ fide*, it can make no difference when the servant is engaged, or where; or whether the service be in the same or another occupation. Why, then, does she quit the service? At the desire and for the convenience of her master, who gave her 10*s.* 6*d.* beyond her wages, as an equivalent, no doubt, for her board. It was accidental, and a favour to the master. The case of *Rex* v. *Richmond* (*a*) is full as strong as this; for there a new servant came into the very place which the pauper had vacated upon a dispensation of his service. Fraud vitiates every thing; but the justice as well as reason of the thing are here with the settlement. Suppose she had come from a distant country, and had no other settlement, shall she lose her only one, which she deserves so well?

(*a*) *Ante*, pl. 443.

If a hired servant be turned away by his master before the expiration of the year, on the fact of his being the father of a bastard child, he will thereby lose his settlement.

446. *Rex* v. *Welford, T. T.* 18 *G.* 3. *Cald.* 57. — *D.* hired himself for a year as a servant to *T.*, of the hamlet of *S.*, and continued to live with him at *S.*, till within three weeks of the expiration of the year; when the master, on account of a *supposed* criminal intimacy between the pauper and a servant-girl then big with child, who had lived with the master, but was discharged from his service, insisted upon his quitting the service, and discharged him accordingly. The pauper, if his master would have let him, would have staid. The master offered him all his wages except 4*s.*, which the master insisted upon detaining, as a satisfaction for the loss of the pauper's service for the three weeks; but which the pauper refused to allow. The pauper, after he was turned out of his service, went to a justice of the peace, in order to recover his full wages; but the justice telling him he could not recover the whole, and the pauper having no money to subsist upon, accepted the money the master had offered him, abating the 4*s.* for the three weeks: no order, in writing, was ever made by any justice or justices, for discharging the pauper from his master's service. —LORD MANSFIELD: Had the fact of criminality been positively stated, to be sure it would have fallen within the principle of *Rex* v.

Brampton (a); but as the intention of finding this fact is represented to have been different from the finding, and as there might have been a more complete consent, the case must go down to be re-stated. The case was re-stated at the following Sessions: the fact of the pauper's criminality was positively found; and the Sessions, at the instance of the appellants, added the fact, that this was the case of a servant in husbandry: this was done with a view of taking it, in this respect, out of the case of *Rex* v. *Brampton*. But the case was abandoned: it never came again into *Westminster-hall*.

(a) *Ante*, pl. 444.

If a servant be taken into custody for an offence, and the detainer prevent him from continuing his service, the master may discharge him before the end of the year; and such discharge is a dissolution of the contract, and impedes his gaining a settlement.

447. *Rex* v. *Westmeon*, *M. T.* 22 *G.* 3. *Cald.* 129. — On the 10th day of *October* in every year, (except when the same falls on a *Sunday*,) a fair for hiring of servants is holden at *C.*; and when the same falls on a *Sunday*, then such fair is holden on the next day: in the year 1779 the 10th day of *October* happened on a *Sunday*; and on the day following (being the day of holding such fair) *W.* was hired by *G.*, of *Y.*, farmer, to serve him as a carter, for one year, at the wages of 8*l.* 8*s.*: *W.* entered into the service on the same day, and continued therein until *Friday* the 6th day of *October* 1780: when he was taken into custody on *a warrant of bastardy* on the oath of *R. H.*, and was carried by the officer who took him to an inn at *C.*, attended by the parish-officers of *W.*: and from thence to *W*; and there by the said officers kept in custody until the 10th day of *October*: on *Sunday* the 8th day of *October*, *W.* was married to the said *R. H.* at *W.*: *G.*, on the said 6th day of *October*, at the inn in *C.*, settled with the pauper his account of wages, saying, that he might not see him again; and deducted from his wages the sum of 1*s.* on account of his not serving him till the end of the year: his master thereupon said, that "though he had no objection to the pauper's gaining a settle-"ment in the parish of *Y.*, yet perhaps the other farmers might." The master did not, in any other manner, assent to or dissent from the pauper's absence from his service, from the time of his being so taken into custody for the remainder of the year: the pauper from the time of his being so taken to *C.* did not return to the service of *G.* — LORD MANSFIELD: It is not necessary to enter into the question how far this is a crime; because the master has not discharged the pauper upon that ground; that it is wrong and an offence no man will deny; but whether to be animadverted upon both by the ecclesiastical and common law is not material here. To be sure, it was not punishable as a crime at common law; and the statutes seem only to go to the punishment of the parents, for the purpose of securing an indemnity to the parish. But here this offence is not assigned as the reason for discharging the servant; and if it were, I have no difficulty to say, that I think a master, hiring a servant after an offence committed, and that not in his own house, shall not, at the close of the year, discharge him under this pretence; it is not a debauching of his servant, or turning his house as it were into a brothel. I do not go on that ground, nor upon the consent or implied agreement to go before the end of the year; for there was none: it was against the intention of both parties that it should affect the settlement; and if the case were to go upon that, it ought to be returned to the Sessions to have that fact stated. There was no fraud intended, because there was no agreement: nor did the master mean either to prevent or promote the settlement; but he deducts

a something, to leave that question open, which it was the object of other persons, who were interested, to have discussed. The true point then is, supposing no wages paid and no agreement, here are four days wanting in the service; and it is by means of his own act that the servant becomes incapable of completing it. His conduct is an offence against morality and the laws, in what jurisdiction soever those laws are administered; and the consequences of it are equivalent to a wilful absence: I therefore think he did not gain a settlement. It is well put, that, had an action been brought for his wages, he could not have recovered upon a *quantum meruit* for these four days. — ASHHURST J. There is no drawing the line; if four days may be dispensed with, four months may. — BULLER J. There must be a service for a year, either actual or implied. Now here is no actual service; and the case affords no circumstance that will warrant an implication. — WILLES J. concurred: and the order of two justices removing the pauper from *W.* to *H.* was affirmed.

The consent of a servant, given in *express terms* to the dissolution of his contract, unless *fraud* is stated, must be conclusive.

448. *Rex* v. *Seagrave*, *H. T.* 23 *G.* 3. *Cald.* 247. — The pauper was hired from *Old Martinmas* to *Old Martinmas*. On *September* the 25th, he told his master that he was going to be married; to which his master made no answer: he went away on *Saturday*, and was married; and upon his return said, that he had no intention of quitting his service; but the master said, he would not employ him any longer; and he said he would go, if he would pay him his year's wages: the master refused it; and said, he would only pay him for the time he had served; and asked him if he would take his wages or go before a justice: the master set out about his business to his farm at *B.*; when the pauper called him back, and said he would take the money for the time he had served; and *that he parted with his own consent.* — THE COURT thought that the last words of the case, as stated, were so clear and unequivocal a dissolution of the contract, that they would not permit it to be argued.

A servant disabled by an accident in the beginning of the year, and never after received into the service, gains a settlement.

S. C. Cald. 472.

449. *Rex* v. *Sharrington*, *M. T.* 25 *G.* 3. EDITOR'S *MSS.* — The pauper being legally settled in *S.* hired himself before *Michaelmas* 1782, for a year to *H.*, brewer, at *L.*, to drive a team, and do whatever he was bid. He was employed occasionally in husbandry, and after having lived with his master seven weeks, as he was driving the beer-waggon, being in liquor, he fell off the shafts, and broke his thigh. He was carried by the officers of the parish where the accident happened to the *Norwich* Hospital, where he continued 29 weeks. On quitting the hospital he returned to *H.*, who refused to receive him, offering to pay him for the seven weeks, and to make him a present, which the pauper refused. He then went to *S.*, and continued 14 weeks, and then, by an order of two justices on the 30th *September* 1783, he was sent to *H.*, who then also refused to receive him. The pauper continued in *L.* at a public-house, and was, after some time, removed by an order of two justices to *S.* He did no work for *H.* after he came out of the hospital, but was and continued incapable of work. The Sessions confirmed the order of removal to *S.*: no counsel appeared to show cause; and THE COURT, being of opinion that a settlement was gained by this service at *L.*, made the rule absolute. — Order quashed.

Absence for some days in the end of the year, by reason of a commitment for getting a bastard child, prevents a settlement; although the master was an overseer, and active in the commitment; and the pauper was let out as soon as the year expired, on giving his own bond to indemnify the parish. S. C. Cald. 495.

450. *Rex* v. *North Cray*, *H. T.* 25 *G.* 3. EDITOR's *MSS.* — *G.*, his wife and children, were removed from *K. D.* to *N. C.*, and THE SESSIONS confirmed the order. About 17 or 18 years ago the pauper, being single, hired himself a few days before *Old Michaelmas-day*, from that *Michaelmas* for a year, at 6*l.* 10*s.* a year, to *B.* of *R.* in *N. C.* He went to his master's on *Michaelmas-day*, and continued with him in *N. C.* till eight or nine days before the *Michaelmas* following; when, being charged on oath with being the father of a bastard child, likely to be born in and to be chargeable to *N. C.*, he was apprehended by a justice's warrant, and, not giving security to indemnify the parish, or entering into a recognizance to appear at the next Sessions, he was duly committed to *Dartford* Bridewell, his master being then one of the churchwardens of *N. C.* and one of the persons who apprehended him, and went with him to the Bridewell. The pauper continued in the Bridewell till the 11th of *October*, and on that day executed a bond to indemnify *N. C.*; and on the same day his master, with the other overseers, went to the Bridewell to discharge him, and the master paid him the wages which he had agreed for, except 4*s.*, which he deducted, contrary to the consent of the pauper, for the time he had been in confinement. The pauper did not recollect giving any receipt, but a receipt was produced and given in evidence, to which he had set his mark. (The receipt was set out; it was for 6*l.* 6*s.* 1*d.*, in full for wages from 10th *October* 1765 to 29th *September* 1766.) The parish-officers consented to his discharge on the 11th of *October*; but the keeper of the Bridewell refused to discharge him without a proper authority; and on the 12th he was discharged by an order of the justice who had committed him, which was set out in the case, and recited that the commitment and discharge were on the request of *S. H.*, overseer of *N. C.* — LEIGH, in support of the order, contended, that in this case the contract was not dissolved but subsisted, in the opinion both of the master and servant, till the end of the year. The master would otherwise have paid the wages when the pauper went from his house; and they endeavoured to distinguish this from the case of *Rex* v. *Westmeon*. (*a*) Secondly, he argued that the behaviour of the master was plainly fraudulent, and for the purpose of preventing a settlement: he was himself one of the overseers, and active in taking the pauper up. He lay by till near the end of the year, and when it was just expired, he took his bond as a security, which he might as well have taken at the commitment. In the case of *Rex* v. *Westmeon* the master had no concern in the commitment. The Court might take notice of fraud, though not expressly stated, and had done so in *Rex* v. *Frome Selwood*. (*b*) But it ought to be stated, the case may be sent back. — LORD MANSFIELD: This case is extremely plain. In fact, the pauper did not serve out the year: there is no pretence of the master's consent to his absence; no colour of fraud: he was absent by reason of his own fraud. — BULLER J. said, in the course of the argument, that there was no actual service, nor any fact from which the Court could imply service. — Order quashed.

(*a*) *Ante*, pl. 447.

(*b*) *Ante*, pl. 437.

Pauper, three days before the end of the year, for the purpose

451. *Rex* v. *North Basham*, *M. T.* 26 *G.* 3. EDITOR's *MSS.* — *J. P.* with his wife and children were removed from *S.* to *N. B.*, and THE SESSIONS confirmed the order. The case stated, That

of avoiding a settlement, proposes to his master to be discharged, which is done before a justice, the master having no objection to a settlement. This is not fraudulent, but a dissolution of the contract, and the pauper gains no settlement.

S. C. Cald. 566.

22 years since the pauper was hired and served for a year in *N. B.*; that he afterwards let himself for a year to *A. D.*, of *E. B.*, and continued in his service at *E. B.* till three days and a half before the expiration of the year, when he married a female servant, who was then big with child by him: that after his marriage, the pauper, in order to avoid gaining a settlement in *E. B.*, and wishing to be settled elsewhere, went with *A. D.*, his master, before *H. W.*, Esq. a neighbouring justice, to be by him discharged from his service; and the said justice, after hearing the master and the pauper, did discharge the pauper from his service; but whether verbally or by order in writing does not appear: that the justice observing that the pauper was a likely young man, *D.*, the master, said he was welcome to settle in his parish if he pleased: the master paid the pauper his year's wages, deducting 1*s.* 9*d.* for the three days and a half which were wanting to complete the year. The pauper has lived ever since at *S.*, and done no act to gain a settlement. — MINGAY: The only way of establishing a settlement at *E. B.* is by supposing every thing that passed relative to the pauper's discharge from his service there to have been fraudulent; but the Sessions have found no fraud, and this Court will not enter into such a question; for which they relied on *Rex* v. *Preston* (*a*). — BEARCROFT, *contrà*: This Court is at liberty to take notice of fraud when the facts are specially stated. There is on the face of this case the strongest fraud, and it is the stronger for being done before a justice. And they cited *Rex* v. *Frome Selwood* (*b*) as in point, and *Rex* v. *Potter Heigham*. (*c*) — LORD MANSFIELD: This was a discharge before a justice; and it was certainly not fraudulent on the part of the master, for he had no objection to the settlement. It was a solemn discharge, by the consent of both parties. — Order confirmed.

(*a*) *Ante*, pl. 428.

(*b*) *Ante*, pl. 437.

(*c*) *Ante*, pl. 442.

A pauper, to avoid being taken up for a bastard child, tells his master he must *be off*, and asks for money, which is given him, and he runs away; after *nine days*, he returns for the purpose of taking away his clothes; and being asked to stay, continues to the end of the year. The contract was dissolved, and he gains no settlement.

S. C. Cald. 562.

452. *Rex* v. *East Kennett*, *M. T.* 26 *G.* 3. EDITOR'S *MSS.* — *S. C.*, his wife and children, were removed from *E. K.* to *P.* The Sessions quashed the order, and stated, That the pauper being settled at *E. K.* at *Midsummer* 1783, hired himself to *C.* of *P.* to serve till next *Michaelmas*; at the expiration of which term he hired himself for a year to the said *C.*, at 7*l.* wages, and served under that hiring till some time in *May* following, when, hearing that there was a warrant out against him for getting a bastard child, he went to his master and told him he must be off, and asked him for money to go off with; on which his master paid him 3*l.* 13*s.* 6*d.*, and he ran away, leaving some clothes and his threshing-tackle, but was taken up two or three days after, and obliged to marry the woman. He then, after nine days' absence, returned to his master's house for his threshing-tackle and clothes, which he had left behind; upon which his master said, "Where are you going?" and the pauper answered, "I do not know:" upon which the master said, "You may as well work for me again as for any other;" to which the pauper agreed, and continued to work there to the end of the year without any fresh agreement, and at the expiration received, including the 3*l.* 13*s.* 6*d.* before paid him, his 7*l.* wages, all but 2*s.* 6*d.*, which the master deducted for his absence. The pauper, when he ran away from his master, never thought of going back to him, but considered himself as discharged. — MORRIS showed cause. There was a dissolution of the contract when the pauper went away in *May*: the parties

clearly intended a dissolution, and the leaving his clothes behind him only marks the precipitation of his flight. The case is extremely like that of *Rex* v. *Caverswall* (*a*); the intention to dissolve the contract was in consequence of a crime of the servant; and they mentioned the case of *Rex* v. *Brampton* (*b*), *Rex* v. *Westmeon* (*c*), and *Rex* v. *North Cray*. (*d*) The conversation on the pauper's return plainly shows that the master did not conceive he had any authority over him. — WILSON: In *Rex* v. *Westmeon* and the other cases of that sort there was no dissolution, but a breach of the contract by absence in prison; so that there was not a service for a year. That does not prove that there was a dissolution of the contract in this case, where, independent of this absence, there is a sufficient service, provided the contract was not dissolved. There must be a clear and manifest dissolution, or else the subsequent conduct will explain the intention, and the absence will be purged. If he had run away without leave, and been received again, it would have been a continuation of the service: he does not receive his wages, but gets money to run away with: the sum was not equal to his wages: he wanted to escape justice; and if he could not escape was to continue servant; he came back without a new agreement, and staid till the end of the year, and received 7*l.*, the original wages. They cited *Rex* v. *Wootton St. Lawrence* (*e*), from a note of Mr. *Wilson*, and *Rex* v. *Hanbury* (*g*); and observed, that in *Rex* v. *Caverswall* it was found expressly that the pauper was discharged. — LORD MANSFIELD having said, "You forget two lines at the end of this case," they said, That part was not material, being only the apprehension of the pauper. To this LORD MANSFIELD replied, "They don't alter the law, but they show the fact." — LORD MANSFIELD: It is melancholy that there should be so much litigation about Sessions' cases. This is a mere point of fact. The servant desires to be off. How off? His service. He receives his wages, and if not the whole, it was on account. He goes back, not on the old contract, but for his clothes, and a new agreement takes place. — Order confirmed.

(*a*) *Ante*, pl. 434.
(*b*) *Ante*, pl. 444.
(*c*) *Ante*, pl. 447.
(*d*) *Ante*, pl. 450.
(*e*) *Post*, pl. 713. This case is reported in Burr. 581., but no question on this point.
(*g*) *Ante*, pl. 433.

453. *Rex* v. *Gresham*, *H. T.* 26 *G.* 3. 1 *T. R.* 101. — *T.* was prior to *Michaelmas* 1780, settled in the parish of *G.*, when, at the *Holt* Petty Sessions next before that *Michaelmas*, he let himself for a year at the wages of 3*l.* to Mr. *C.* of *B. R.*, in the same county: he duly entered upon his service with *C.*, and continued therein for about a quarter of a year; and upon some dispute between him and his master, his master insisted upon turning him away, and threw down 15*s.*, which the pauper took up, and went away to his father's house in *N.*, where he continued for six days, during which time he looked upon himself as a free man; he then returned, at the request of his master, and continued in the service to the end of the year, when his master paid him 2*l.* 5*s.*, being the remainder of his wages agreed for at the Sessions. — LORD MANSFIELD C. J. The absence of a servant from his master's service is an equivocal act, and therefore may be explained by other circumstances; but if it appear that the contract has been once dissolved, it cannot be set up by a new agreement. In this case the contract was absolutely dissolved: the master insisted upon turning away the servant, and paid him down all his wages that were due: the consent on the other side is by taking the money

If a master insist on turning away his servant, and throw down his wages, which the servant takes up, and then goes away, and after the expiration of *six days* returns, at *his master's request*, and serves the remainder of the year, the *absence* is not purged by the subsequent return; for the contract, being once dissolved, cannot be set up

by a subsequent agreement.

up: then how did he come back again? It was upon the *request* of the master; there is nothing by which the absence can be explained. The meaning of "purging an absence" is where the act itself is doubtful.

If, after a hiring for a year, the master tells the servant that he shall be absent because of his settlement, and that he shall have a fortnight at the end of the year, to get what he can, and the servant assent, though under an apprehension that the master would not otherwise have hired him, this is a *dispensation* with the service for the time, and not an *exception* out of the original contract.

454. *Rex* v. *Sulgrave*(*a*), *E. T.* 28 *G.* 3. 2 *T. R.* 376. — *P.* was hired in *February* by *H.* of *S.*, to serve till *Old Michaelmas* following, and served him accordingly. On the *Friday* before *Old Michaelmas* his master asked him if he would stay again: he said he would, if they could agree about wages, and asked *5l. 5s.*, which the master thought too much. The pauper immediately set out to go to a statute, and having gone about 10 yards, returned for some things he had forgotten. He then met his master again, who said he would give him the *5l. 5s.*, and gave him 1*s.* earnest. — The master, while he was putting his hand in his pocket for the 1*s.* said, "You shall go away a fortnight at "*Michaelmas*, because of your settlement; and I will give you "that fortnight to get what you can;" to which the pauper then agreed. The pauper accordingly went to his father's and staid a fortnight; during which time he worked for *C.* in digging sand on *H.*'s land, and received from *C.* 1*s.* a day; and once or twice during the fortnight he ate at *H.* At the end of the fortnight he went to *H.* and continued to serve him at *S.* till *Lady-day*, when *H.* removed, and the pauper with him, to *C.* *H.* soon after died, and the pauper continued to serve Mrs. *H.* in *C.* till the time when he left her, and he then received his wages up to that time from a relation of Mrs. *H.*; and there was nothing deducted for the fortnight; but he did not remember what sum he received. The pauper apprehended that his master would not have hired him, if he had not agreed to go away for the fortnight. — ASHHURST J. The rule established in these kind of cases is this, where there is a *bond fide* exception of part of the time at the time of the hiring, that is not a hiring for a year; but if there be no exception at the time of making the original contract, then a permissive absence is considered as a dispensation of part of the service by the master; and it does not operate in the same way as an exception out of the original contract, which defeats the settlement. And the question, whether it be one or the other, must depend on the particular circumstances of each case. In this case there was a complete hiring for a year at the time. The parties having disagreed on the terms proposed, the pauper went away; but on his return, his master said he would give him the *5l. 5s.*, which he agreed to accept, and gave him 1*s.* earnest. It is likewise stated, that while the master was putting his hand into his pocket, he told the pauper he should go away for a fortnight; but the contract was complete before that time, and what passed afterwards can only be considered as a dispensation with the service; for at that time the master had a complete right to his service for a year, and the pauper had agreed to serve him for that time, and the 1*s.* earnest was to bind the agreement for a year for the *5l. 5s.*; otherwise it appears to be giving the servant more than he originally asked for the whole year for serving him for a shorter period. If then the contract were complete before any thing was said relative to

(*a*) And see Rex *v.* Bottesford, *ante*, pl. 286. Rex *v.* Market Bosworth, *post*, pl. 479.

the fortnight's absence, this was a dispensation with the service, and not an exception out of the original contract. An exception is a stipulation on the part of the person for whose benefit it is introduced; but here it was not made on the request of the servant, but on the offer of the master; and it appears that he said it was for the express purpose of preventing the pauper's gaining a settlement. This is not such a reason as the Court would give much countenance to. Whether, indeed, the Sessions might not have determined this on the ground of fraud was for their consideration. As it is, there is no occasion to go into that ground, as we are of opinion that this was a dispensation with the service. With respect to the servant's apprehension, which is stated in this case, that cannot vary the question; we are to decide on the terms of the contract, and not on the apprehension of the pauper. — BULLER and GROSE Js. of the same opinion.

If a hired servant be taken up on a charge of bastardy, and marry the next day, and is removed to his former parish, but return to his place in a few days, and his master receive him, and be serve out the year, and is paid his full wages, yet *the absence* is an interruption of the service, and will prevent his gaining a settlement by such hiring and service.

455. *Rex* v. *Kenilworth*, *T. T.* 28 *G.* 3. 2 *T. R.* 598. — *B.*, on the 10th of *May* 1765, was hired to *C.*, of *B.*, for one year; and on the same day entered into the service, and continued in it until the 1st day of *April* 1766, when he was taken up on a charge of bastardy, and was married the next day. His master did not make any complaint against him, nor discharge him from his service. On the 3d of *April* 1766, the pauper was removed from *B.* to *K.* the place of his birth, and was delivered to the officers of the parish, where he continned under the order of removal until the 7th of *April* 1766, and then returned back to *B.* into his master's service, who willingly received him again; and he continued with his master in *B.* in such service until the end of the year for which he was hired, and received his full year's wages. — BULLER J. There is no proposition in the law of settlements more clear than this, that an order of removal unappealed against is conclusive against all the world; and this is so clearly and so universally established, that it ought never to be impeached. At the same time, the rule is, that the order of removal though unappealed from, does not at all affect a subsequent settlement. Then the question here is, Whether the pauper gained any settlement in *B.* subsequent to the order of removal? Now in this case he did no act by which he could gain a settlement in *B.* after the order of removal. The circumstances of the pauper's having been apprehended on a charge of bastardy, and of his marriage, I lay entirely out of the question; for it was competent to the master to receive him again after he was discharged out of custody, if he pleased: and the servant might have served his master after he was married, as well as before. But what I rely on is this, that after the order of removal, unappealed from, the pauper could not legally return to the parish from whence he had been removed: it would have been a crime in him to do so; and if he had been indicted for such a disobedience of the order, it would have been no defence to him to have urged that he returned for the purpose of completing his contract. The order of removal put an end to the service; and if he could not return without committing a crime, he could not be liable to an action by the master for not completing the contract. There is a great difference whether the party is disabled by his own act, or by the act of law, from performing his con-

tract; he is answerable for the former: but if the law intervene and say he shall not complete the contract, it puts an end to the contract. Now in this case the pauper returned after the order of removal to the parish of *B.*, where he served a month; but that could not gain him a settlement there; for the act subsequent to the order of removal, by which he was to gain a settlement should be complete in itself. — GROSE J. I doubt whether the party was liable to be removed; but there having been an order of removal unappealed from, it is decisive: and he has done no subsequent act to gain a settlement.

If a servant hired for a year give warning eight days before the expiration of the year, to leave his master at the end of the year, and the master discharge him on the same day, paying him his full wages, the servant being willing to stay till the end of the year, the contract is not thereby dissolved, so as to prevent the servant's settlement, for it is merely dispensing with the remainder of the service.

456. *Rex* v. *St. Philip in Birmingham*, *T. T.* 28 *G.* 3. 2 *T. R.* 624. — *S. B.*, the pauper, was originally settled in the parish of *B.*; but subsequent to her settlement there she was hired for a year to one *E. P.*, in the parish of *P.* She entered on such service, and served till within eight days of the end of the term, when, on account of some difference between them, she gave her mistress warning that she would leave her service at the end of the year. The mistress, on having hired another servant, by reason of some impatient behaviour of the pauper, discharged her from the service, but paid the pauper her full wages. The pauper accepted the wages, and accordingly quitted the service, and left the parish eight days before the year ended; but she said she would have served her year if her mistress would have let her. — ASHHURST J. This was not an absolute dissolution of the contract. For though it be true that an agreement between the master and servant, before the expiration of the year, to put an end to the service, will defeat the settlement; yet if it be not a voluntary agreement between the parties to put an end to the contract, as if the master fraudulently turn away the servant with a view of preventing his gaining a settlement, or wrongfully discharge him before the end of the year, that will not defeat the servant's settlement. Now, in the present case, I think that this was a mere wrongful act of the mistress, which was *submitted to*, but *not agreed to*, by the servant. It appears by the case, that the mistress, on account of the servant's behaviour, turned her away, but paid her the whole wages, on which she went away. But we cannot infer from that, that it was by agreement; for something should have been stated in the case to show that it was voluntary on the part of the servant, and that she consented to a dissolution of the contract. But as far as we can collect from the case, it is to be inferred that the servant went away rather in consequence of the wrongful dismission by the mistress, than by her own consent; for she was desirous of serving the whole year. On the whole, I am of opinion, that this must be considered as a dispensation with the service; and that the pauper gained a settlement in *B.* — BULLER J. This is one of the clearest cases of a dispensation with service to be met with, whether the conduct of the servant, or that of the mistress be considered; for it appears that neither of them thought that she could put an end to the service. The servant first was desirous of going, and gave her mistress warning that she would leave her at the end of the year, because she was conscious that she could not go till that time. Then the mistress wished, for her own accommodation, to dismiss the servant before the end of the year; but she was convinced that she could not dissolve the contract before the end of th

year, and therefore paid the servant the whole year's wages. This was dispensing with her service for the rest of the time. The case of *Rex* v. *Gresham* (*a*) is clearly distinguishable from the present. There, after the pauper had been in service a quarter of a year, his master insisted on turning him away, and threw down 15*s*., which was all that was due at that time, and this the servant accepted, and then went away. There the contract was clearly put an end to; and if so, it could not be revived again by any subsequent agreement; for when the pauper returned, it was under a new contract; and it appears that the pauper thought himself at liberty in the mean time. — GROSE J. It is clear, that if the servant be turned away by the wrongful act of the master before he has served the year, it will not prevent the pauper's gaining a settlement. Now, here this is either the wrongful act of the mistress, or it is a dispensation with the service. The case of *Rex* v. *Gresham* is distinguishable from the present, for the reasons given. This is more like the case of *Rex* v. *Richmond* (*b*), where the pauper left his service 13 days before the expiration of the year, at his master's request, but received his whole wages; and it was held that he gained a settlement by such service. — Rule absolute.

(*a*) *Ante*, pl. 453.

(*b*) *Ante*, pl. 443.

457. *Rex* v. *St. Andrew, Holborn*, *T. T.* 28 *G.* 3. 2 *T. R.* 627. — The pauper, *M. R.*, in *June* 1782, was settled in that part of the parish of *St. A. H.*, which lies above the bars, in the county of *Middlesex*, by hiring and service. About the latter end of the same month, or the beginning of the month following, she was hired as a nursery-maid by Mrs. *P.*, the wife of *C. P.*, of *St. M., W.*, at the yearly wages of 8*l*. 8*s*.: she continued in the said service till within four or five days of the expiration of a year; when her master becoming a bankrupt, and the messengers taking possession of the house, her mistress discharged her, paying her the whole year's wages. — THE COURT were clearly of opinion, that the bankruptcy of the master did not dissolve the contract of hiring without the servant's consent; and that the pauper gained a settlement in *St. M., W.* — Both orders quashed.

If a servant hired at yearly wages be discharged four or five days before the end of the year, upon the master's becoming *bankrupt*, and receive the full year's wages, *the service* is sufficient to gain him a settlement.

458. *Rex* v. *Grantham*, *T. T.* 30 *G.* 3. 3 *T. R.* 754. — *W. R.* was hired a fortnight after *Martinmas* 1784, by *N. L.*, of *A.*, farmer, to serve him for a year at the wages of 6*l*. 10*s*., and entered upon his service, and continued therein about six weeks, when, with his master's permission he went to assist his father, who then was ill in the said parish of *A.*, and with whom he staid 13 weeks: at the expiration of which time he returned, in consequence of a warrant having been obtained against him at the instance of his master, into his service under the original contract, and continued with his said master until *Sunday* evening, three days before the expiration of the year; when his master came home in liquor, abused the pauper, threw him down, and afterwards turned him out of doors. The pauper slept at his father's that night in *A.*, and the next morning his master would have had him return to his service, and stay the remainder of the year, but the pauper refused going into his master's service again; and threatened, that unless he paid him the whole of his wages, he would complain of the ill usage he had received to a magistrate. The master then agreed to pay him his full year's wages, deducting for the 13 weeks he was with his father in his illness, which

A servant who is ill-treated, and turned out of doors by his master three days before the end of the year, and who refuses (on his master's request the next day) to return into the service, does not gain a settlement by *service*, though the master pay him wages for the whole year. See Rex *v.* Upwell, *post*. pl. 464.

the pauper took, and then left his master's service, *contrary to the express request of his master.* — LORD KENYON C. J. The circumstances stated in the case, that this transaction happened only three days before the end of the year, might have led us at first to suppose that there was some fraud intended on the part of the master; but none is stated. It has been said, and rightly so, that an *actual* service is not necessary, for that a *constructive* service is sufficient; but the question here is, Whether we can say that there was a constructive service for the whole year? and whether the relation of master and servant subsisted during that time? If the absence be for a reasonable cause, it is immaterial whether that absence be at the beginning, the middle, or the end of the year. And it has been urged, that this was an absence for a reasonable cause, on account of the ill-treatment of the master. But here there was no *animus revertendi*, which distinguishes the present from the class of cases alluded to. When the servant was ill-used, *though he could not have left the service without his master's consent, or without applying to a magistrate to be discharged on that account*, yet the master did consent to the servant's leaving him, and both parties agreed to put an end to the contract. If the master had afterwards complained of the pauper's not serving him for those three days, the latter might have answered by saying, that the contract was dissolved. And if its being absolutely put an end to only three days before the expiration of the year will not defeat the settlement, what line can be drawn with respect to the time of the service which is necessary to give a settlement? If one day, or three days, may be dispensed with, any other time may be equally so. In some cases, indeed, where it has been equivocal what the transaction really was, and the servant has paused and considered whether he would absolutely quit the service or not, other circumstances have been admitted to explain the absence; but here was no suspense, no *locus penitentiæ;* for both the master and the servant agreed to put an end to the service. The master wished to turn away the servant, though unwarrantably; and though the latter was not bound by such ill-treatment, he afterwards consented to dissolve the contract. — ASHHURST J. If there be any interruption in the service, however small, it will prevent the servant gaining a settlement. And though an absence do not necessarily defeat a settlement, yet to prevent that it must be either with the master's consent, or be such as the law will warrant. But this was neither; for both the master and servant agreed to put an end to the service. And though the former at length consented to give the latter the whole wages, that was not intended to operate as a dispensation with the remainder of the service, but as a redemption of his credit. — Both orders confirmed.

If a servant, a few days before the end of the year for which he is hired, go away in order to get another place for the next year, without asking his master's con-

459. *Rex* v. *Clayhydon*, *M. T.* 31 *G.* 3. 4 *T. R.* 100. — The pauper being settled at *U.*, by hiring and service, made a bargain with *H.*, in *D.*, for a year, at the wages of 2*l.* 15*s.*, and served till nine days before the expiration of the year, when he went away on a *Sunday* morning, in order to get another place when his year should be up, without asking any leave of, or mentioning it to, his master: he returned on the *Tuesday* following, about six o'clock in the morning, when he asked his master what work he should go about: the master told him he might go and serve the master

he had worked for the day before. He saw his master about an hour afterwards, who then paid him his wages up to that time only. No conversation passed; he then went away, and did not afterwards return: *he wished to have staid out the year, but his master would not let him.* — LORD KENYON C. J. It is now too late to say that a *constructive service*, pursuant to a hiring for a year, will not confer a settlement on the servant, though I very much doubt whether a greater certainty on this subject would not have been attained by attending strictly to the words of the act of parliament; however, in order to preserve an uniformity of decisions, we must adopt the construction which has so frequently been put upon it. But I do not know that it has ever been decided that a settlement was obtained, *unless by construction the relation between master and servant continued during the whole year.* The cases of *Rex* v. *Islip* (*a*), and *Rex* v. *Maddington* (*b*), which have been relied on, do not govern the present. In the former, the servant did not return until after the expiration of the year; and the facts of that case left the question open, Whether or not the relation between the parties subsisted during the whole year? The Court there thought that the master improperly refused his consent, and that though the servant were not in the actual discharge of his duty in his master's house, yet as he was liable to be called into the master's service during the remainder of the year, that he was constructively in that service down to the end of the year. But the present case differs from that, because during the continuance of the year a further act was done. When the servant returned after his absence, the master not only found fault with him, but refused to take him again into his service: it is true that the servant wished to continue, but both parties did that which put an end to the contract; the one paid, and the other received the wages. After that period the servant was no longer subject to the control of the master. In *Rex* v. *Islip*, the servant was under the master's control during the whole year; he was liable to be called into the master's service whenever the master thought proper; but here the relation between the master and servant was rescinded before the end of the year by the act of both parties; then it is impossible to say that the pauper was constructively in the service after that time. So in the case of *Rex* v. *Maddington*, though the servant left the service three weeks before the end of the year, and went to his friends, because he was not able to perform his service, yet there was no act done during the year to put an end to the contract. Afterwards, indeed, when the master paid the servant his wages, he deducted a part of them; but he could not, by an act *ex post facto* deprive the servant of the benefit to which he was before entitled. But the case of *Rex* v. *Gresham* (*c*) is extremely like the present; there the Court held that, by the act of accepting the wages, the servant agreed to put an end to the contract. I am, therefore, of opinion, that there could be no *constructive* service in this case, when the parties themselves, by mutual consent, put an end to the relation of master and servant within the year. — ASHHURST J. It is much to be lamented that the distinctions in these kind of cases have been so nice that it is difficult to discover the principles on which they have been decided. The question then is, What is the principle on which they have turned? I think that will be best supported

sent; and on his return before the end of the year, the master insist on turning him away, and offer him his wages up to that time, which he accepts without any objection; this absence is a dissolution of the contract, and defeats the settlement, though the servant *wish* to stay out the year.

Rex *v.* Thistleton, *post*. pl. 462.

(*a*) *Ante*, pl. 425.

(*b*) *Ante*, pl. 438.

(*c*) *Ante*, pl. 453.

in this case by determining that the service did not continue during the whole year. It is not now to be contended that an actual service is necessary; it must be admitted that a constructive one is sufficient. But this case is distinguishable from that of *Rex* v. *Islip* (*a*); for here was a dissolution of the contract before the end of the year: on the servant's return, the master insisted on discharging him, and offered his wages; and though the servant *wished* to continue in the service, yet he at length consented to put an end to the contract, by taking up those wages. The acceptance of wages was a signifying of the consent on his part. And this brings it within the case of *Rex* v. *Gresham.* (*b*) — GROSE J. Though there has been some contrariety in the cases as to what shall be said to be a hiring for a year, yet it is clearly settled, that if during the year there be a dissolution of the contract, no settlement can be gained. Now, on the facts of this case, it is clear that the contract was dissolved before the end of the year. The master refused to receive the pauper into his service when he returned, to which the latter made no objection, but received his wages up to that day only. It is, indeed, stated afterwards, that the servant wished to have served out the remainder of the year, but that his master would not let him; yet it is clear that at the time when the wages were paid both parties consented to put an end to the contract; for it is stated, that no conversation passed at that time; and though the servant may have wished to stay till the end of the year, yet he did not communicate that wish to his master. And the other fact stated, namely, that he accepted a sum short of the whole year's wages, shows that it was understood by both that they intended to dissolve the contract. This case is distinguishable from those of *Rex* v. *Islip*, and *Rex* v. *Maddington* (*c*), for the reasons already given; and it is like that of *Rex* v. *Gresham.* — Order of Sessions quashed.

(*a*) *Ante*, pl. 425.

(*b*) *Ante*, pl. 453.

(*c*) *Ante*, pl. 438.

If a servant be hired for a year, his running away, and continuing absent for 13 weeks, and, on his being fetched back under a justice's warrant, consenting to allow his master 1*s.* a week for the time he was absent, and returning to his service till the end of the year, is not such an absence as dissolves the original contract.

460. *Rex* v. *East Shefford*, *T. T.* 32 *G.* 3. 4 *T. R.* 804. — The pauper, *M.*, was hired by *B.*, of *W.*, to serve him from *Michaelmas* 1790, to the *Michaelmas* following, at 4*l.* 4*s.* wages. He, accordingly, went to his master's on the day appointed, and continued there eight weeks, when he ran away, and was absent for 13 weeks, during which time he worked with and received wages from another person. *B.* then apprehended him by a warrant; but in his way to a justice asked him, Whether he would come back to his place or go to prison? and if he would come back and go on in his place as he ought to do, he might. He said he would come back; and his master asked him then, what he should be willing to abate for the time he had been absent? He said, he thought 1*s.* a week would not *hurt* him, which was agreed to; and he returned into his service, and continued till the end of his year, when he received all his wages, except the 13*s.* which had been agreed to be deducted. — LORD KENYON C. J. If the whole contract were dissolved when the servant absented himself, and a new one entered into on his return, I agree that the pauper could not gain a settlement by serving under it. And, therefore, the question is, Whether the service after the pauper's return was performed under the old or a new contract? This is one of the many cases in which we have to regret that the words of the statute have been departed from: but as there is a series of adjudged cases, the

principle of which applies to the present, it is too much for us to overturn them; though, if the question were now to arise for the first time, perhaps, we should make a different determination. It has been decided, that absence at the beginning, the middle, or the end of the year, may be dispensed with, either with the consent of the master, or for an excusable cause. In *Rex* v. *Hanbury* (a), it was held, than an absence for a fortnight did not defeat the settlement, though the wages were deducted for that time; now, it is impossible to distinguish this case from that in principle. It has been said, however, that the absence in that case was for a shorter period than in the present; but I wish that those who used such an argument would have drawn the line, and given us the *ne plus ultra*. Probably, if the first case after the statute had arisen upon an absence of 13 weeks, the Court would have started at the question; but the Court have gone on step by step, and having held that service for a fortnight may be dispensed with, I think we are bound by the principle of those cases to say, that this pauper gained a settlement in *W.* by hiring and service; for, on his return, he was received again into his master's service, where he continued under the old contract. There is no pretence to say that he entered into a new contract; and the master's object in apprehending him by a warrant was to compel him to complete the service under the old contract. — BULLER J. and GROSE J. were of the same opinion.

(a) *Ante*, pl. 433.

461. *Rex* v. *Sutton*, *T. T.* 34 *G.* 3. 5 *T. R.* 657. — *Boardman* resided with his father, as part of his family, upon part of a tenement of about 30*l.* *per annum*, in *Bold*, and was hired for a year to *Beckett*, of *S.*, which he served in *S.*, and then returned to his father in *Bold* at *Christmas*. At *Candlemas* following he attained the age of 21, and having remained with his father from the time of his leaving *Beckett*'s service, he continued with him as part of his family, being employed in husbandry without any agreement as to service until *Christmas* afterwards, his father allowing him what he thought fit. He was then hired for a year by *K.*, in *G. S.*, to serve in husbandry at the wages of 7*l.* 10*s.*, and 5*s.* more in case his master approved of his service; he continued in that service until he was unfortunately, by the visitation of God, deprived of his reason, about the month of *October* or beginning of *November* next following, at which time his father became acquainted with his situation, and very soon afterwards fetched him away, taking him home to *Bold*, and in two or three weeks afterwards came and received the wages of 7*l.* 10*s.*, but not the 5*s.*; and the father afterwards kept him at home as part of his family for about 10 years in *Bold*, where the father lately died; the son, during all that time, as well as since, continuing in the same unfortunate situation. — LORD KENYON C. J. The cases that have already been decided on this subject have settled the principle on which our judgment must proceed in this case. As this is a removal from *Bold* to *S.*, all that we are called upon to decide in this case is, Whether or not the pauper be now settled in *S.*? and whether the settlement which he gained in that place has or has not been superseded by a subsequent settlement? for any question that may hereafter arise between the parishes of *Bold* and *G. S.* will not affect the case now before the Court. It is stated in the case that the pauper was hired for a year in *G. S.*; that he continued in that

A servant who is deprived of his reason 40 days before the end of the year, and is taken home by his father in another parish, but receives his wages for the whole year, does not by this absence lose his settlement in the master's parish.

service as long as he was capable of performing it; but that in the course of the year he was deprived of his reason, and, consequently, rendered incapable of discharging his duty to his master. But in the consideration of questions of this kind, it is immaterial whether the servant's incapacity to perform his service proceed from an infirmity of body or of mind. Where, indeed, the servant commits a crime, the master may apply to a justice to have him discharged; but if no such application be made, the relation of master and servant subsists. In this case there being no fault in the servant, nor any application to a magistrate to discharge him, (for which indeed there was no cause), I am clearly of opinion that the relation of master and servant continued during the whole year, and, consequently, that the pauper acquired a settlement by that service. If he had recovered his reason before the expiration of the year, the master might have been compelled to receive him again into his house. It was said by Lord *Mansfield* in *Rex* v. *Christchurch* (*a*), that the absence of the servant on account of sickness will not prevent his gaining a settlement, and that it is immaterial whether or not such absence happen in the middle or at the end of the year. With regard to the case of *Rex* v. *Sharrington* (*b*), though it was not argued, it appears that the Court exercised their judgment upon it, and I subscribe to the doctrine of it. These observations are sufficient to dispose of this case; but there is another question behind, and as probably the magistrates below will be called upon to make another order, I will say a few words upon it for the sake of their information. That question is, Whether, supposing the pauper gained a settlement by reason of his service with *K.*, he is settled in *G. S.*, the parish where the master lived, and where the service was in contemplation of law performed, or in *Bold*, where the father lived, and received his son for the last 40 days of the year? And upon this question I have as little doubt as on the other point; being of opinion that the settlement is in *G. S.*, where the service was in law performed, though the servant did not, in point of fact, reside there the last 40 days in the year. In general, the servant is settled in the parish where he serves the last 40 days; but I consider the residence with the father, under these circumstances, as a residence in a hospital. We should thwart our own feelings, and act contrary to humanity and principles of public policy, if we were to determine that the father in this case brought a burden on his parish, by receiving his son into his house from motives of tenderness and affection. And it must be remembered that this is not a case *sui generis*; there are others that stand *in pari ratione*. In general, a bastard is settled in the parish where he is born; but if he be born in a gaol (*c*), or house of correction (*d*), his settlement is in his mother's parish. And I think that the case of *Rex* v. *Sharrington* goes some way to warrant my opinion in this case; for I cannot consider the pauper's residence with his father as a performance of service with his master; he was there *diverso intuitu*, in order to recover from his illness, and not for the purpose of serving his master. I am, therefore, clearly of opinion, that the pauper's former settlement has been superseded by the subsequent one which he gained in *G. S.*—ASHHURST J. It is enough for the decision of this case, that the pauper is not settled in *S.*—GROSE J. The principal question is, Whether or not the pauper's

(*a*) *Ante*, pl. 436.

(*b*) *Ante*, pl. 449.

(*c*) *Ante*, pl. 10.

(*d*) *Ante*, pl. 3.

master indisposition dissolved the relation of master and
? What was said by Lord *Mansfield* in the case al-
o, and in several others, is certainly true, that the illness
servant, whether it happen at the beginning, in the middle,
e end of the year, does not operate as a dissolution of the
t between master and servant. The master is bound to
re of his servant during illness, if the latter insist upon it.
f the servant's illness do not put an end to the contract, it
s until the end of the year; and here, in fact, it did subsist;
ster so considered it, and paid the whole year's wages;
the sum of *5s.* was not given; that was not to form part
wages, but was to have been given as a bounty, if the
approved of the servant's conduct. If the service under
ntract with *K.* were performed, it was not performed in *S.*;
t is sufficient to warrant us to decide that the pauper is not
in *S.* It is not absolutely necessary to say where the
is settled, whether in *Bold* or in *G. S.*, but for the reasons
y my Lord, it may be proper to give our opinion upon that
so; and I perfectly agree that the settlement is in *G. S.*,
the master lived. The case of *Rex* v. *Sharrington* is strong
ort of this doctrine. If we can find any case that warrants
n opinion, we ought to adopt it; though even without the
ity of that case, I think we ought not to consider the re-
with the father under these circumstances as a performance
service, so as to give a settlement in the father's parish.
nsequences of such a determination would be highly incon-
t; for then a father would be afraid of receiving a sick son,
s out in service, into his own house, lest he should thereby
burden upon his parish. — LAWRENCE J. declared himself
same opinion. — Both orders quashed. — LEYCESTER then
d to what was said by Lord *Mansfield* in *Rex* v. *Alton* (*a*),
irmatory of the opinion now delivered on the second point;
ose a person in service has an accident upon the road by
king a leg, and he stays 40 days in a place, shall that be a
ement?"

(*a*) *Ante*, pl. 317.

Rex v. *Thistleton*, *H. T.* 35 *G.* 3. 6 *T. R.* 185.—*N.*, being
at *T.*, was hired to *R.*, of *K.*, from *Martinmas* 1792 to *Mar-*
1793; he entered upon the service, and before the ter-
n of the year he went to *Billesden* statutes, which are
Michaelmas, and hired himself to *H.*, of *B.*, to enter into
vice from *H.* fair (19th *October*), if *R.* would let him come
nd if *R.* refused, then he was to come at the expiration of
r with *R.* The next day after the statutes the pauper asked
ster whether he could let him go; his master told him he
not spare him, he must get a new servant first. Some time
e hired a new servant, and then the master said, "I have
a new servant, you may go now, I have not work for you
." The pauper then went into the house with his master, to
his wages, and Mrs. *R.* said to her husband, "Do not
et any thing from his wages;" *R.* replied, "I do not intend
The master then paid him his whole wages, and the pauper
way. This was about a fortnight before *Martinmas*; and
uper entered into his new service with *H.* in three days. —
KENYON C. J.: The distinction between the different cases
this subject seems to be this; if the pauper be absent from

If a yearly servant three weeks before the end of his year hire himself to a second master, provided the first would let him go, and the first master a week afterwards consent and pay him his whole year's wages, it is a dissolution of the contract with the first master. Rex *v.* Clayhydon, *ante*, pl. 459.

the service with the concurrence, remaining, however, subject to the control, of the master, he may acquire a settlement, because this only amounts to a dispensation with his service; but if the master has once parted with his control over the servant, there no settlement is gained; and the receiving of the whole year's wages does not make any difference. In this case the master had given up all control over the servant; he himself was instrumental in enabling the servant to make another contract with another master; and from what passed between these parties, it was, evidently, the intention of both that the pauper should become *sui juris*, and should be enabled to contract with another master. The cases, in which it has been determined that a settlement was gained, notwithstanding the servant was not in actual service during the whole year, proceeded on artificial reasoning, on a supposition that the relation of master and servant continued throughout the year. But that idea is inconsistent with what was done in this case; for if that relation had subsisted here, the master might have insisted on the pauper's returning into his service after the wages were paid; but he agreed not to insist on that when he parted with the servant. It is miscalling this a dispensation with the service; for upon the agreement to part, the pauper's liability to serve the first master ceased. — ASHHURST J.: The contract between the pauper and the first master was absolutely put an end to when the wages were paid. The pauper hired himself to the second master, provided his first master would give him leave; the servant, accordingly, asked the consent of his first master, who refused at first, but afterwards, when he had hired another servant, he did give his consent, and then it was agreed that the contract should be dissolved; for the pauper could not have two masters at the same time.—GROSE J. I doubted, at first, whether we should not break in upon some former decisions, if we were to hold that the pauper did not gain a settlement in *K.*; but, on further consideration, I do not think it will have that effect. It is difficult to reconcile many of the cases upon this subject with the act of parliament; but when cases have been decided, it is our duty to adhere to them. It is clear that the legislature intended that there should be a whole year's service in order to confer a settlement; and though the Court has departed from that strict line in deciding that a constructive service is sufficient, we ought not to extend that doctrine, of the original propriety of which we entertain doubts, farther than those cases require. And in this case the pauper, when he applied to his first master to permit him to go into another service, had it in his contemplation to destroy the contract with the first master. And if we were to say that the service for the latter part of the year was service performed under the first master, we should determine that he was serving two masters at the same time, which would be contrary to the statute, and absurd.

Rex *v.* Potter Higham, *ante*, pl. 442.

If a servant be taken ill five days before the end of the year, and go home to his mother, who by his desire, fetches away his clothes, and receives the year's

463. *Rex* v. *Whittlebury*, *M. T.* 36 *G.* 3. 6 *T. R.* 464. — The pauper was hired for a year by *G.*, of *P.*, and he entered and continued in the service until within five days of the end of the year, when he went to *T.* statute, to seek for a service for the next year. While he was there, he was suddenly taken ill of a fever, which continued for six weeks, and he was deprived of his senses during part of that time. He went from *T.* statute to his mother; but neither he nor his mother having any money to maintain him under his illness, he, that night, desired his mother to go to his master for

his money, and to bring away his clothes. The mother went the next day, and at her return she brought his money all but 1*s.*, which she told him his master had stopped for the remainder of the year, and gave it to him together with his clothes, with which he was satisfied; and he thought himself at liberty to hire himself to another master, if he had been well enough.—LORD KENYON C. J.: There is no doubt but that the parties may put an end to the contract during any part of the year, either at the beginning, in the middle, or only a day before the end of it; and if they do the servant gains no settlement, because the act of parliament requires that the relation of master and servant should continue during a whole year. It is not necessary here to decide, whether, in every case, the receipt of wages, before the expiration of the year, puts an end to the contract; or whether, if a servant be taken ill during the year, the master can, of his own authority, discharge him, and put an end to the contract; or whether, in such a case, justices may put an end to the contract; but it is stated in this case, that five days before the end of the year (and it is immaterial whether that happened five months or five days before the year expired), the pauper sent his mother to his master for his money, the latter paid the wages stipulated for the whole year, except 1*s.*, which he deducted because the whole year's service was not performed. As far, therefore, as the master had the power, he did put an end to the contract before the end of the year: he had no right to deduct 1*s.*, but on the ground that the pauper did not continue his servant until the end of the year. Then what was the conduct of the servant? He received this money, saying, that he was satisfied; and it also appears, that he thought he might have hired himself to another master before the end of the year. One party said, I put an end to the contract as far as lies in my power; the other said, I also agree to put an end to it as far as respects me; therefore both parties, whose consent was necessary, did consent to dissolve the contract before the expiration of the year.—GROSE J. The question before us is not, whether or not the master alone could have put an end to the contract on account of the servant's illness; but whether there was sufficient evidence of a dissolution of the contract by the consent of both parties. It is a mere question of fact, which I think the justices should have finally determined; but having sent the case here for our opinion, I have no objection to give mine upon it. It must be remembered, that at the time when the servant sent his mother to his master for his money, his wages were not due; no money was due to him until the year expired, or, until there was an end of the contract; this message, therefore, was an offer on the part of the servant to put an end to the contract. Then the master paid the whole year's wages, deducting 1*s.* for the rest of the year; the servant received this together with his clothes, and said that he was satisfied; by that he signified his consent to put an end to the contract.—LAWRENCE J. Nothing could be due from the master to the servant until the completion of the year, or the end of the service. The servant applied for his money at a time when he was not entitled to it, unless the master would consent to dissolve the contract: in answer to this application, the master sent all that he thought was due; he deducted 1*s.* for the remainder of the year; and the servant said he was satisfied. The cases of *Rex* v. *Christchurch* (*a*)

wages, excepting 1*s.* for the five days, this is a dissolution of the contract.

(*a*) *Ante*, pl. 436.

(a) *Ante*, pl. 461.

and *Rex* v. *Sutton* (a), are distinguishable from the present. In the former there was a dispensation with the service; and it is immaterial whether the service be dispensed with in the middle or at the end of the year. And in the latter, both parties did not consent to dissolve the contract before the end of the year; but in this case they did. — The order of Sessions, therefore, quashing the order of two justices, by which the pauper was removed from *Whittlebury* to *P.* was confirmed.

A servant who, on being beaten by her master 16 days before the end of the year, desires her master to dismiss her, and receives her whole year's wages and goes away, thereby dissolves the contract.

464. *Rex* v. *Upwell, M. T.* 38 *G.* 3. 7 *T. R.* 438. — The pauper was hired at *Michaelmas* 1791, by *Failes* of *U.*, for a year, and continued in his service until within 15 or 16 days before the following *Michaelmas*, when her master kicked and beat her; the pauper complained to her father of this ill-treatment, and, in conjunction with her father, required her master to dismiss her from his service, under a threat of applying to a magistrate for redress on account of the assault; the master then paid her the whole of her wages, and told her she might serve the remainder of the year, but the pauper refused so to do, and immediately left the service. — THE COURT said, it must be considered as an agreement by both parties to put an end to the contract, several days before the expiration of the year, and, consequently, that the pauper had gained no settlement in *U.* And that the case of *Rex* v. *Grantham* (b) was decisive of the present.

(b) *Ante*, pl. 458.

A master being obliged to leave his house seven days before the end of a year for which he had hired a servant, told the latter that he had no further occasion for her services, and paid her the whole year's wages: the master would otherwise have kept her, and she was unwilling to leave the service: Held a dispensation of the service for the rest of the year.

(c) Rex v. Richmond, *ante*, pl. 443. R. v. St. Bartholomew, *ante*, pl. 445. R. v. St. Philip, Birmingham, *ante*, pl. 456. R. v. St. Andrew, Holborn, *ante*, pl. 457.

465. *Rex* v. *St. Mary, Lambeth, E. T.* 39 *G.* 3. 8 *T. R.* 236.— *Walton*, on the 15th of *January* 1797, hired herself to *Serle* of *St. Paul, Covent-Garden*, for a year from the 18th of that month; she went into his service on the 18th of *January*, and continued in it until the 11th of *January* following, when an information having been laid against her master for keeping a gaming-house, he quitted his house, and told his servants (and the pauper amongst them) that he had no longer any occasion for their services, and then paid the pauper her whole year's wages. The master would have kept the pauper, except on account of his being so obliged to quit his house, and the pauper was unwilling to leave his service. She then left her master's house, and went to her sister's, and did not engage herself in any new service until after the year expired, though from the time that her wages were paid, she considered herself at liberty to go where she pleased. — LORD KENYON C. J. I cannot distinguish the present case from the four that were cited by the counsel in support of the order of Sessions (c); and it was decided in each of those, that it was a dispensation with the service, and not a dissolution of the contract. Perhaps I should have had some difficulty in saying, in some of those cases, that it was only a dispensation with the service; but it is sufficient to say that those cases were so decided, and having been so determined, they ought not now to be shaken. But the cases cited by the counsel on the other side are distinguishable from those, because in them the contract was dissolved by the mutual consent of both parties. The distinction between the different sets of cases is certainly a very nice one; but I think that this case must be governed by the four to which I first alluded; and if this be a question of evidence, it appears that the Sessions, by their determination, have impliedly found that the parties did not consent to dissolve the contract. — GROSE J. I have frequently wished that, in decisions on this subject, the Court had always been as strict in requiring a service for the

whole year, as they have been in requiring a hiring for a year, because then no question could have arisen on constructive services. As, however, a different rule has been pursued, and as nice distinctions have been introduced in cases of this kind, in deciding this case, we must endeavour to find out and adopt that case which most resembles the present. And I think that this most resembles the four cases that were first cited. In some respects this is like that of *Rex* v. *St. Philip, Birmingham* (*a*); for I consider that the servant was wrongfully turned away; the master could not continue any longer in his house, and the servant insisted on having her whole year's wages, and though she received all her wages she was unwilling to leave the service: now if it be considered that she was dismissed against her consent, there could be no dissolution of the contract by the consent of both parties.—LAWRENCE J. I think that the four cases first alluded to ought to govern the present.—LORD KENYON then expressed a wish that the justices at the Sessions would in future find the fact, whether or not the parties put an end to the contract before the expiration of the year.

(*a*) *Ante*, pl. 456.

The Sessions should state as a fact (in a settlement case) whether the master dispensed with the service before the end of the year, or whether there were a dissolution of the contract by mutual consent.

466. *Rex* v. *St. Peter, Mancroft, H. T.* 41 *G.* 3. 8 *T. R.* 477. — *Gayfer*, the pauper, was let to Mrs. *Morton* of the parish of *St. P. M.*, about a fortnight before *Michaelmas* 1797, by a letter sent by Mrs. *M.* to the pauper's friends, stating that she gave 3*l.* a year wages, on which the pauper agreed to go, and sent to her mistress to let her know when she should come; and in consequence of a second letter, desiring her to come on *Thursday* the 11th day of *October*, she went to her service on the 12th of that *month*: on her going her mistress objected to her not having come the day before, for which the pauper gave as a reason, that she had only quitted her last place late on *Old Michaelmas-day*. About three weeks after she went, the pauper said to her mistress that it was proper to come to some agreement, as they had never had any further than a few lines, to which her mistress answered, "You know what wages I sent you word, and as the general way "is to let for a month's wages or a month's warning, I do not wish "to confine you for a year;" but did not say any thing about not choosing to hire for a year. She received her wages quarterly; and about a fortnight before *New Michaelmas-day* her mistress asked her, whether she chose to go away on *New Michaelmas-day* or *Old-Michaelmas-day*? assigning as a reason for her asking, that she had hired a new servant, who wished to come to her at *New Michaelmas*. The pauper said it was immaterial to her as she had not got a place, and agreed to go at *New Michaelmas*, which she did; at which time the other servant came into her mistress's service. Her mistress was not in a condition of life to keep two servants; and if a place had offered at *New Michaelmas* the pauper looked upon herself as in a situation to take it, though when she first got to her mistress she considered herself as to live with her until *Old Michaelmas*. On quitting her service on *New Michaelmas-day*, which was a fortnight after the agreement to go, her mistress paid to her the whole which remained due of the 3*l.* wages, although at the time when the pauper agreed to go away at *New Michaelmas*, nothing was said about wages. The pauper would not have objected to going away at *New Michaelmas* if her mistress had proposed to make a deduction for the time, but would have mentioned it to her, and told her she was willing to stay till *Old*

Michaelmas. The pauper liked to go away at *New Michaelmas* rather than *Old Michaelmas-day*, but would not have staid after *Old Michaelmas* if her mistress had requested her. The pauper considered the conversation which passed on the fortnight before *New Michaelmas* as a month's warning to go away at *Old Michaelmas*. — When this case came on for argument, LORD KENYON C. J. took an opportunity of expressing his regret that the courts of Quarter Sessions departed from the rule formerly established, by stating evidence instead of facts in the special case: but added, that upon this case, as disclosed, there was strong evidence to induce the Court of Quarter Sessions to adjudge that the contract between the mistress and the servant was dissolved before the end of the year, and, consequently, that the latter did not give a settlement in *St. Peter's, Norwich*. That the distinction established in all the cases was perfectly clear; that where the servant continued liable to serve during the whole year, though the master dispensed (*a*) with the actual service for any part of it, the servant gained a settlement, because the relation of master and servant subsisted all the year, and the master might resume the right to the service if he chose; but that where the parties absolutely put an end to the contract before the expiration of the year, as in the present case, the service did not gain a settlement. (*b*) That, though it was at first doubted whether or not the master could dispense with the service at the end of the year so as to give the servant the benefit of the contract for the purpose of a settlement, it had been long settled that it was immaterial whether the service was dispensed with at the beginning, the middle, or the end of the year. — GROSE J. The Court of Quarter Sessions should state the result of the evidence; and in a case of this kind they should state the fact one way or the other, whether this were a dispensation with the service, or a dissolution of the contract. The counsel in support of the order of Sessions saying there were reasons that would probably induce the Sessions to decide that there was a dispensation with the service, THE COURT ordered the case to be sent down to be re-stated.

A servant hired for a year departed from his master some short time before the end of the year, on ill usage, but received his whole year's wages, and something over: Held, that he thereby gained no settlement, he having refused to serve out the year when required by his master.

467. *Rex* v. *Corsham*, *E. T.* 42 *G.* 3. 2 *East*, 303. — The case stated, that the pauper's husband, *Isaac*, was born at *Box*; and about 14 years since was hired for a year, and served the same in the parish of *Colerne*: that he was afterwards hired by *Dalmer*, of *Corsham*, at 4*l.* 4*s. per annum*; with whom he continued to serve till within a fortnight or three weeks of the expiration of the year; when, upon a dispute between him and his master, he, in consequence of his master's kicking him, would not stay; but went to his father's house in *Kington St. Michael*. In the course of the following week, and before the end of the year, he returned with his father to *D.*'s house, and received the whole of his wages, and 2*s.* 6*d.* over for himself: his master asked him to stay; but he refused, and went back to his father's house. — LORD ELLENBOROUGH C. J. The cases of *Rex* v. *Grantham* (*c*), and *Rex* v. *Upwell* (*d*), have decided the present question. In both of them

(*a*) *Vide* Rex *v.* Richmond, *ante*, pl. 443; Rex *v.* St. Bartholomew, *ante*, pl. 445; Rex *v.* St. Philip, Birmingham, *ante*, pl. 456; Rex *v.* St. Andrew, Holborn, *ante*, pl. 457; and Rex *v.* St. Mary, Lambeth, *ante*, pl. 465.

(*b*) *Vide* Rex *v.* Castlechurch, *ante*, pl. 430; Rex *v.* Gresham, *ante*, pl. 453; Rex *v.* Grantham, *ante*, pl. 458; Rex *v.* Clayhydon, 459; and Rex *v.* Whitlebury, *ante*, pl. 463.

(*c*) *Ante*, pl. 458. (*d*) *Ante*, pl. 464.

there was a payment by the master of the whole year's wages, and a departure from the service before the end of the year against the will of the master; and in both the Court held that no settlement was gained. There is nothing material to distinguish this case from those; and therefore it is better to abide by them. Whether there were a dissolution of the contract, or a dispensation of the service, is indeed a question of fact, but of fact mixed with law; and the Sessions, having stated all the circumstances, have sent us the case, that we may draw the proper legal conclusion. — GROSE J. This is not like the case where the master has turned away the servant, to prevent his gaining a settlement; for the master wished him to stay, and the pauper refused: then the payment of the whole year's wages by the latter was merely to prevent an action, and argues no consent on his part to dispense with the service. — The other judges concurred. — Orders quashed.

468. *Rex* v. *King's Pyon* (*a*), *M. T.* 44 *G.* 3. 4 *East*, 351.—The pauper proved that she was hired to Mr. *D.* of *K. P.*, to serve him from *Old May-day* 1800 to *Old May-day* following, at the wages of 2*l.* 15*s.*, and (if she behaved well) two pounds of wool: that she served him for about eight months, when a dispute happened with her master about some stockings which had been burnt, and he dismissed her from his service: that she applied to a magistrate, and when before him she was charged by her master with having neglected his feeding pigs by not giving them water, which she denied; and also respecting the burning the stockings: that she was desirous of continuing in her service, but her master refused; and the magistrate ordered her master to take her back into his service, *or pay her the whole of her wages:* that he refused to take her again, but paid her the whole of the money, but not the wool: that the pauper, from the time she received her wages, offered herself as a servant soon after to several persons. On cross examination the pauper admitted she had worn her mistress's stockings once or twice, when she was wet, but that no charge was made against her on that account before the magistrate. The same magistrate who made this order of adjudication joined in the order of removal. The Court thought that the pauper's master, by paying her wages, though he did not receive her again, dispensed with the remainder of her service, and therefore confirmed the order of removal. — LORD ELLENBOROUGH C. J. We are not called upon to say whether the magistrate had or had not a right to discharge the servant from her service: it is enough that he proposed an option to the master to take the servant back, or pay her the whole of her wages. The master refused to take her back, but agreed to pay the whole wages, and did pay them: and the servant showed her assent to the dissolution of the contract by taking the wages and offering her services to other persons. Both parties gave the magistrate the power of dissolving the contract, by showing their assent to what he directed in that respect. Then, after all this, could either the master or servant have maintained an action against each other, the one for not performing the remainder of the service, the other for not employing her during that time? This is the true question to be considered; and I should not wish to carry the idea of dispens-

A servant hired for a year, four months before the end of the year being discharged by her master upon a trivial dispute, applied to a magistrate for redress, being desirous of continuing in the service. The magistrate ordered the master to take her back, or pay the whole year's wages. The master refused to take her back, but paid the whole year's wages (but not some wool which he had also agreed to give her if she behaved well). The servant took the money, and tendered herself as a servant to others: Held, that the contract was thereby dissolved, and no settlement gained under it, as in case of a mere dispensation of service.

(*a*) See Rex *v.* Leigh, *post*, pl. 471.

ation further than it has been already carried; which in many of the cases seems to me to have been stretched as far as ingenuity could go, upon the false idea that the servant had *a right* to acquire in gaining a settlement; as if he must not have a settlement at all events, in one place or another. I do not mean, however, to disturb any of the cases which have been already decided; but I am not inclined to carry the decisions further still from the plain words of the act of the 8 & 9 *W.* 3. *c.*30., which are, that no servant shall gain a settlement "unless he shall *continue and* "*abide in the same service* during the space of *one whole year.*" And it seems to me, that when the parties stand in such a situation, that where neither the master can compel the servant to come back into his service, nor the servant can compel the master to take him back, and neither of them have any legal means of compelling redress against the other, there is a dissolution of the contract. — GROSE J. I consider the master as having taken the option given him by the magistrate, and choosing to pay her the whole year's wages then, rather than take her back again; this was purchasing the dissolution of the contract on his part, which she assented to by taking the money and tendering herself to others as a servant. — LAWRENCE J. It is extraordinary that the cases should ever have departed from the plain words of the statute of King *William*, which seem intended to exclude constructive services, by providing that a servant shall not gain a settlement under a contract of hiring for a year, unless he shall "continue *and abide in the same service*" for "*one whole year.*" Now here is nothing like an *abiding* in the service for a *whole* year. In the case of *Rex* v. *Thistleton* (*a*), Lord *Kenyon* said, that the cases in which it had been determined that a settlement was gained, notwithstanding the servant was not in the actual service of the master, proceeded on a supposition that the relation of master and servant continued throughout the year; but if the master had once parted with the control over his servant, and could not call upon him for his service, no settlement was gained; and in *Rex* v. *St. Peter's* (*b*) he laid down the same distinction, and held that to gain a settlement the servant must continue liable to serve the whole year. If the pauper be absent with the concurrence of his master, remaining subject to his control, it is a dispensation; but if the master cannot resume the right to the pauper's service, it is a dissolution. — LE BLANC J. We are called upon to carry the principle of dispensation of service further than any of the cases have yet gone. For here both parties go before a magistrate, and agree to leave the decision of their dispute to him; and he, hearing what is urged on both sides, gives an option to the master to take the servant back, or to pay her the whole year's wages; and both parties go away acting as if they acquiesced in that determination of the matter: for the master does not take the servant back again, but gives her her whole year's wages; and she accepts the money, and offers her services to other persons. — Orders quashed.

(*a*) *Ante*, pl. 462.

(*b*) *Ante*, pl. 466.

A yearly servant, about a fortnight before his year expired, being too ill to work, his mas-

469. *Rex* v. *Sudbrooke*, *M. T.* 44 *G.* 3. 4 *East*, 356. — *P.*, the pauper, settled at *S.*, about the beginning of *May* 1795, hired himself to *F.* of *P. P.* by the month, at monthly wages, under which hiring he served near three months, when his master saying he should want him for a continuance, they agreed for a year at

12*l.* 12*s.* wages.' The pauper said, he considered the first contract at an end, though he never actually left the service. He lived with *F.* under the yearly hiring till about the middle of *April* 1796, when being too ill of a fever to do his work, his master paid him his whole year's wages, when he *left his master's service*, and went down to the *Lincoln* hospital, and never returned into the service of *F.* — LORD ELLENBOROUGH C. J. If there ever were a statute which required a strict construction, and where the very letter of it should have been abided by, it was this of the 8 & 9 *W.* 3. *c.* 30.: for the poor can receive no greater benefit by one mode of construing it than by another; and yet it is a supposed interest of the poor in extending the facility of acquiring settlements which has introduced so much laxity in the construction of this and other statutes of the same sort; as if they must not have a settlement in some place or another. And, therefore, these statutes ought to have been construed according to the strict question of right between the two contending parishes, one or other of which is to bear the burthen of maintaining the pauper. That mode of construction, however, has not been adopted; and the doctrine of a *dispensation of service* has been introduced: but still that has only been allowed where both parties contemplated the continuance of the relation of master and servant. But here the servant being ill and unable to do his work, voluntarily *left his master's service*, as it is stated in the case, before the end of the year, when his master paid him his whole year's wages: we must, therefore, take it to be not only a ceasing to *abide*, in the words of the act, but a relinquishment of the service altogether. After that, neither party could maintain any action against the other for the affirmance of the contract, or continuance of the service. The servant who had left his master's house and service could not have maintained an action against the master for not taking him into his service again: nor could the master, who had assented to the other's departure and paid him all his wages, have compelled him to return again. Then if neither had any remedy against the other upon the contract, nor any compulsory means of enforcing its execution, it must be dissolved in point of law. In the case of *Rex* v. *Christchurch* (*a*), at the time of the servant's departure, both parties contemplated the continuance of the service if the servant recovered; for she was sent to *L.*'s at the master's desire, and with a request from him to *L.* to take her in; and if he refused, she was to return to her master's house. I do not overlook the circumstance pressed upon us, that there was an advance of the *whole year's* wages before the end of the year; but the same circumstance occurred in *Rex* v. *Godalmin* (*b*), and *Rex* v. *Castlechurch* (*c*); and yet no settlements were there holden to have been gained by the servants who quitted their master's service before the end of the year by mutual agreement. — GROSE J. It may perhaps be difficult to reconcile all the cases upon this subject; but according to the construction of Lord *Kenyon* on the act of King *William*, the relation of master and servant must continue during the whole year; or, in the words of the act itself, there must be a *continuing and abiding in the same service during the space of one whole year*, otherwise no settlement can be gained. Now here it is expressly stated, that the servant *left his master's service* and went down to *Lincoln* hospital, having, previous to his

ter paid him his *whole* year's wages, when he *left the service*, and went to a hospital, and never returned into his master's service: Held, a dissolution of the contract, and that no settlement was gained by such hiring and service.

(*a*) *Ante*, pl. 436.

(*b*) *Ante*, pl. 427.

(*c*) *Ante*, pl. 430.

going, received his whole year's wages. Then how can we say that the contract *continued*, and that the servant *abided* in the service during the whole year? — LAWRENCE J. In the case of *Rex* v. *Thistleton* (*a*), it was holden that if the master parted with his control over the servant before the end of the year, that made an end of the contract between them; and in that case, and *Rex* v. *Castlechurch* (*b*), the payment of wages for the whole year was holden to make no difference. Here, too, the Justices have stated that the servant *left the service;* by which we are not merely to understand that he left his master's *house;* for that could not be considered as a *leaving* of the *service*, unless the contract were meant to be dissolved. In *Rex* v. *Christchuroh* (*c*) it did not appear that the servant left the *service* when she quitted her master's house: she was sent by her master to *L.*'s, with his request to take her in; and if *L.* could not take her in, she was to return to the master's house; and *Wilmot* J. there considered that "the servant's being at *L.*'s or in the hospital, was just the same thing "as her being kept in the master's house under his own roof." — LE BLANC J. However we may lament that the words of the statute have been departed from, yet as an extended construction of it has been made in some of the cases, if this came within the words and precise determination of those authorities, we must have abided by them: but unless it be shown to fall within some precise determination, the Court will not extend the departure still further from the words of the statute. I do not found my opinion upon the mere circumstance of the servant's leaving his master's house to go to the hospital; but I think that the parties came to a determination to put an end to the contract. The servant's illness cannot enable the master to determine the contract; but if the servant choose on account of illness to go away, illness cannot prevent him from coming to an agreement with his master to put an end to the contract; and the question is, whether they did not so agree here. It is stated that he received his whole year's wages, and went away before the end of the year, and went to *Lincoln* hospital, and never returned to his master again. Then are we not to conclude that this was done by mutual consent? The case of *Rex* v. *Castlechurch* shows that the payment of the *whole* year's wages makes no difference if the parties agree to put an end to the contract of service before the end of the year. So neither can it make any difference that the cause of this was illness; for though illness would not enable *one* of the parties alone to put an end to the contract, it might still induce them *both* to come to such an agreement: and here they did so.

(*a*) *Ante*, pl. 462.

(*b*) *Ante*, pl. 490.

(*c*) *Ante*, pl. 436.

The pauper desired her mother to look out for a place for her, and the mistress on the application of her mother, some time before *Old Michaelmas*, said that she would give the pauper the same wages as her other ser-

470. *Rex* v. *Rushall*, *T. T.* 46 *G.* 3. 7 *East*, 471. — Two justices, by an order, removed *S. W.*, single woman, from the parish of *W.*, in the county of *S.*, to the parish of *R.*, in the county of *W.* The Sessions on appeal confirmed the order, subject to the opinion of this Court upon the following case: The pauper being 30 years of age, and a native of *W.*, and her mother and other relations living near *R.*, some time before *Old Michaelmas-day* 1802, the time at which the service in which she was then living at *W.*, in *S.*, was to end, wrote to her mother, desiring her to look out for a place for her; which she did, and in consequence treated with the wife of the Rev. *K. P.*, of *R.*, *W;* upon which Mrs. *P.* informed the mother that she would give her daughter the same

wages as she did to other servants, (being 10*l.* 10*s.* a year, and 1*l.* 1*s.* for tea,) and wait till she came down, and desired that she would come as quickly as she could; but the mother made *no absolute agreement* for her daughter, but afterwards informed her that she *had got* a place for her *if she liked it*. The pauper left her service in *W.* immediately on its expiration, and went into *W.* without delay, and arrived on *Saturday* the 16th of *October* at her mother's near *R.*; and on *Monday* the 18th Mr. *P.* applied to her to know if she liked to come into his service, saying that he wanted her to come immediately, as he had company to dinner. She went to Mr. *P.*'s house, and then it was for the first time agreed between Mrs. *P.* and her, and that the wages should be 10*l.* 10*s.* for the year and 1*l.* 1*s.* for tea, (which was the same as she had given to her other servants) with liberty of parting at a month's wages or a month's warning. She then went to work, and continued in Mrs. *P.*'s service until *Old Michaelmas-day* following. About five weeks before that time she gave her mistress notice that she should quit her service at the next *Old Michaelmas-day*. On the said *Old Michaelmas-day* 1803, the pauper came to her mistress to receive her wages, who paid her the whole year's wages and the 1*l.* 1*s.* for tea, but told her she wanted a week of serving out her year. The pauper said she was willing to stay another week; but the mistress replied that it did not signify, as she had got another servant in her place, who was then in the house (which she in fact was). She then left the house, and never returned into the service afterwards. Upon which facts the Court of Quarter Sessions were of opinion, that the pauper was settled at *R.* — LORD ELLENBOROUGH C. J. Upon the first point, if the justices had found as a fact from what time the hiring commenced, the case would have been clear; but as they have not done so, we must draw the inference from the facts stated. The mother, being desired to look out for a place for her daughter, applied to Mrs. *P.* of *R.*, who informed her that she would give her daughter the same wages as her other servants, and would wait till she came; but the case expressly states that the mother made *no absolute agreement* for her daughter. And indeed there was nothing at that time said about the *quantum* of the wages, or the time of service, or about the warning, afterwards introduced into the contract, on which either might relinquish the contract. The daughter arrived at *R.* about a week after *Old Michaelmas-day*, when upon Mr. *P.*'s application to her to know if she liked to come into his service, she went there; and *then* it was, as the case states, for the *first* time *agreed* between Mrs. *P.* and her, that the wages should be 10*l.* 10*s.* for the year, and 1*l.* 1*s.* for tea, with liberty, which was not before mentioned, of parting at a month's wages or a month's warning. This was on the 18th of *October*. Then about five weeks before *Old Michaelmas-day* the pauper gave her mistress notice to quit at *Old Michaelmas-day*. The mistress could not object to receive the notice, and therefore looked out for another servant: but when the pauper went to receive her wages, the mistress paid her the whole year's wages, but told her that she wanted a week of serving out the year. The pauper then said indeed that she was willing to stay another week; but as the mistress, in consequence of the warning which the pauper had

vants, and wait till she came; but the mother made no absolute agreement for her daughter, though she informed her that she had got a place for her if she liked it. About a week *after Old Michaelmas* the mistress applied to the pauper to know if she liked to come into her service, and they then agreed for the first time for certain yearly wages (the same as other servants) *with liberty of parting at a month's wages or warning:* Held, that the hiring commenced only from the day when the pauper and her mistress agreed on the terms specified, and not from *Old Michaelmas* or before, when the mother spoke to the mistress. And the pauper having given a month's previous notice to quit at *Old Michaelmas-day*, which the mistress accepted, and procured another servant to come on that day, when the pauper received the whole year's wages; but upon the mistress telling her that she wanted a week of serving out her year, she offered to stay another

week; to which the mistress said that it did not signify, as she had got another servant in her place: Held, that this was a dissolution of the contract before the end of the year, by the notice to quit given and accepted, and not a mere dispensation of the service; and consequently no settlement was gained by such hiring and service.

given her, and which she had accepted, had provided herself with another servant, and did not want two of them, she told the pauper that it did not signify, as she had got another servant in her place: on which the pauper left the house. There can be no doubt upon this statement that both parties agreed to put an end to the contract before the end of the year. The servant gave above a month's warning to quit at *Old Michaelmas*, which she had a right to do, and the mistress accepted the warning, and both parties acted upon it. And this it appears was, in fact, before the end of the year, whatever the servant might have supposed when she gave the warning. Now the rule which the Court has laid down as the test whether the circumstance attending the departure of a servant before the end of the year amount to a dissolution of the contract, or only to a dispensation of the service, is whether the master has the power afterwards of compelling the continuance of the service: if he have not, there is an end of the contract; if he have, but choose to dispense with it, it is a dispensation. If, after this, any person had harboured the servant when the mistress desired her services, could she have maintained an action for it? Certainly not: and that is a fair test that the relation of master and servant had ceased to exist. — GROSE J. The hiring in this case did not commence till the 18th of *October*, and, consequently the year would not expire till the 18th of *October* following. But there was a liberty of parting at a month's wages or a month's warning; of which the servant availed herself, and gave due notice to quit at *Old Michaelmas-day*. The reason of that is obvious; for that is the usual time for hiring of servants in that part of the country, and she meant to look out for another place. The mistress considered it as good notice, and procured another servant to come to her on that day. Here then was a notice by the servant to quit a week before the end of the year, which was accepted by the mistress, and the servant quitted accordingly. It is clear then that there was not a year's service, and, consequently, no settlement gained by the pauper in *R.* — LAWRENCE J. On the first ground, there is no pretence for saying this was a hiring from *Old Michaelmas-day*. The daughter desired her mother to look out for a place for her, and she before *Old Michaelmas* treated with Mrs. *P.* of *R.* on behalf of her daughter; but *no absolute agreement* was made at that time; nor was there any till the 18th of *October*, when, *for the first time*, it was agreed between Mrs. *P.* and the pauper that the latter should have 10*l.* 10*s.* a year wages and 1*l.* 1*s.* for tea, with a liberty of parting at a month's wages or a month's warning. That must be taken to be a contract to commence *from that time*, there being no reference to any antecedent time. And in truth both parties so considered it at the time of parting; for when the mistress, on paying her whole year's wages, told the pauper that she wanted a week of serving out her year, the latter did not dispute that, but, in effect, admitted it, and said that she was willing to stay a week longer. The mistress, however, stood, as she had a right to do, upon the warning which had been given, and said that it did not signify, as she had provided herself with another servant in her place, who was then in the house: on which the pauper accepted her wages, and went away before the end of

the year. There is clearly therefore no settlement. — LE BLANC J. If the Sessions upon this statement of facts had found this to be a hiring from *Old Michaelmas-day*, it would have been bad. But it is now contended, that the hiring commenced, not from *Old Michaelmas-day*, but from the day that the mother spoke to Mrs. *P.* but no agreement was then made; the mistress only told the mother what wages she gave, and that she would not fill the place which was vacant in her family till her daughter came, only desiring that she would come quickly. Then when the daughter did come the terms were settled, which had not been mentioned before. In the absence, then, of any reference for the commencement of the hiring to the prior time when the mother spoke to Mrs. *P.*, we can only say that it was a hiring from the time when the agreement was actually made, and the terms settled between the mistress and servant. Then, on the second point; there was a liberty to part on a month's wages or a month's warning; which distinguishes this from all the other cases of dispensation of service, where the only duration mentioned was for the year. But here the servant had an option of determining the authority of the mistress upon a month's notice which she availed herself of; and gave a month's notice to quit at *Old Michaelmas-day*: the mistress accepted the notice, not as being to quit at the end of the year, but as a month's warning. And though she gave the pauper the whole year's wages, yet she pointed out to her that she was not entitled to so much, because she wanted a week of serving out her year. The pauper did not deny that, but offered to stay out the week. However the mistress did not consent to that, as she had got another servant, in consequence of the other's notice to quit. The pauper, therefore, took her wages and departed before the end of the year.—Both orders quashed.

471. *Rex* v. *Leigh*, *T. T.* 46 *G.* 3. 7 *East*, 539. — Two justices, by an order, removed *J. B.*, *H.* his wife, and their four children, by name, from the parish of *Leigh* to the parish of *C.*, both in the county of *W.* The Sessions, on appeal, quashed the order, subject, &c. — The pauper, *J. B.*, being legally settled in *C.*, on the 31st of *March* 1795, hired himself as a servant in husbandry for a year to *S. J.*, of the parish of *Lulsley*, and agreed for 6*l.* 10*s.* for the year's service. The pauper resided at *Lulsley* in *J.*'s service from thence until the 25th of *March* 1796; upon which day, by permission of his master, and for the purpose of seeking a new service for the ensuing year, he went to the mop (a meeting for the purpose of hiring servants) at *B.*, six miles from *Lulsley*. The pauper did not return to his master's house till three o'clock in the morning of the 26th of *March*, when he came home with some ribbons in his hat, which he had purchased. In the course of the morning of the 26th his master came to him, and observed, "he supposed masters were scarce at the mop, and that he had enlisted for a soldier, and told the pauper he should stop no longer in his service." The pauper told his master he had not enlisted (which was the fact,) and that he wished to stop his year out. But the master said he would not keep the pauper any longer in his service, and the pauper should stop no longer; and at the same time offered the pauper as wages for the time he had served something less than 6*l.* 10*s.* which the pauper refused to

Five days before the end of the year a servant absented himself by leave one day from his master's service to look out for another place, and on his return the master on some trivial pretence said he should not stay any longer in his service, and offered him a trifle less than his whole wages; which the servant refused; but was then ready to have accepted his whole wages, though

he would rather have staid out his year; and immediately applied to a magistrate to oblige his master either to pay him the whole or to receive him into his service for the remainder of the year: when the magistrate ordered half a crown to be deducted; and the servant thereupon *hired himself to another master, before his first year was out*; and after the year received from his first master his whole wages: Held, that this was a dissolution of the contract before the end of the year by mutual consent, signified on the part of the servant by his entering into another service.

(a) *Ante*, pl. 468.

accept. The pauper said he would have accepted the full year's wages, if then tendered to him by his master; but that he had rather have staid out his year. The pauper left his master's house immediately in consequence of what had passed, and never returned to it. On the next day, the 27th of *March*, a summons having been taken out by the pauper against his master, they both appeared before a justice of the peace for the said county; upon which occasion the pauper applied to the magistrate to direct his master either to receive him into his service for the remainder of the year, or to pay him his whole year's wages: and the magistrate verbally directed half-a-crown to be deducted from the year's wages and retained by the master. The pauper on the same 27th of *March* hired himself as a servant to Mr. *S.* of *B.*, and on that day entered upon such service. About a week after the pauper went to his former master, Mr. *J.*, for his wages, who paid the full sum of 6*l.* 10*s.* Mr. *J.* some days afterwards applied for a return of the half-crown directed by the magistrate to be deducted, but the same was never returned to Mr. *J.* The Sessions, being of opinion that the pauper under the circumstances above stated had gained a settlement in *Lulsley* by hiring and service for a year with *S. J.*, quashed the order. The question for the opinion of the Court was, Whether, under the circumstances above stated, the pauper served a year with *S. J.*, so as to gain a settlement in *Lulsley*? — LORD ELLENBOROUGH C. J. How can there be said to have been a constant refusal of the servant to put an end to the contract when he actually entered into another service before the time when his first contract would have expired? That is an insuperable difficulty. That he did not receive his wages before the year was out cannot vary the case; for he would have received them at the time, if offered. The case of *King's Pyon* (a) is almost in terms the same as the present. The magistrate in both cases was made a sort of arbitrator between the parties, and both parties acquiesced in putting an end to the contract of master and servant. — The other judges concurred. — And LE BLANC J. added, that if there were any fraud in this case the magistrates must have been a party to it. — Order of Sessions quashed.

Where the master died three weeks after hiring the pauper for a year, the latter, abiding in the service with the widow and sons to the end of the year, gains a settlement in the parish where she served: and it is no less an abiding in the service for a year because one of the sons on the frivolous

472. *Rex* v. *Hardhorn with Newton*, *H. T.* 50 *G.* 3. 12 *East*, 51. — Removal from *N.* to *H.* Order confirmed, subject, &c. The pauper was hired by *R. G.* in *H.* for a year: three weeks after the beginning of the year the pauper's master died, and the farm was continued on by his widow and two sons, *G.* and *W.* About three weeks before the end of the year the pauper fell out with *G.*, one of the sons, about her work, because she threw more sand upon the floor than he deemed necessary, and was by him turned out of doors, though she was willing to stay. The next day she came again for her clothes, when *G.* paid her 4*l.* 10*s.* as for her full wages. There was a dispute about the amount of her wages; *G.* insisting that the pauper was hired for 4*l.* 10*s.* and she demanding 5*l.* 15*s.* The pauper, however, accepted 4*l.* 10*s.*, and never got any thing more, though she employed an attorney for that purpose. The pauper, when she came the next day for her clothes, offered to stay to the end of the year, but *G.* would not let her. — LORD ELLENBOROUGH C. J. If, indeed, there were a conflict of cases upon this point, that would bring us back to the

words of the act, the true import of which we should have to consider: but there is no material conflict of the cases, nor any thing in the construction contended for by the respondent's counsel which will clash with the words of the act. There must be an abiding in the service for a whole year in order to confer a settlement: and as far as lay in the power of the pauper, there was an abiding in it for a year; but she was wrongfully and forcibly turned out of door by her master against her will: and when she returned the next day for her clothes, he gave her 4*l.* 10*s.* which he said was the whole of her wages; but she did not assent to that, and demanded more, though she took what he was willing to give her in part, and offered to stay to the end of the year, maintaining her right to her full wages. She therefore did all she could to abide in the service according to her contract, and did so, except so far as she was prevented by an act of force. The case of *Rex* v. *Grantham* (*a*), which is principally relied on to show the dissolution of the contract, is very distinguishable. The servant there having been improperly turned out of doors by his master in the first instance, took him at his word, and refused to return to the service, though invited by his master so to do, and when the master at last agreed to pay him his full wages, he left the service contrary to the express request of the master to stay. — GROSE J. In the case of *Rex* v. *Grantham*, there was an agreement by both parties to dissolve the contract before the end of the year; and the same answer may be given to all the other cases which have been held to be dissolutions of the contract. But here there is nothing like consent on the part of the servant. The master turned her out of doors against her consent, and she wished to come back and perform her service to the end of the year, but he would not permit her. Therefore, though the service was not performed, yet she tendered herself to perform it, which is equivalent to the performance of it in law; and the contract could not be dissolved by the wrongful act of the master in turning her away. — LE BLANC J. The first point which was suggested has been very properly abandoned now; for there is no doubt that the death of the master after the pauper was hired for a year, she continuing to serve the widow and son on the farm, was a continuation of the same service. Then with respect to the other point, it is now too late to recur back to the strict words of the act of parliament, upon questions of dispensation or dissolution of the contract: a long current of cases has established the distinction: and where the dissolution of the contract has not been assented to by both parties, the Court has enquired into the cause of the master's dismissal of his servant. Now here was a frivolous cause assigned by the master, which would not warrant him in turning the servant out of doors against her consent; and she offered to stay, but he refused to permit her. It was necessary, however, that she should have her clothes and something to maintain her; therefore her taking her clothes and what money he was willing to pay her, does not show her consent to abandon the contract, which she expressly offered to fulfil to the end of the year. Then after her departure she did not hire herself into another service before the end of the year, as occurred in one of the cases which was held to be a dissolution of the contract. Here, then, the pauper did every thing she could to continue in the service;

pretence that the servant threw more sand on the floor than he deemed necessary, turned her out of doors three weeks before the end of the year: she being willing and offering to stay to the end of the year, but carrying away her clothes the next day and taking what the son insisted was her full wages for the year, according to the agreement, though she demanded a larger sum as her full wages.

(*a*) *Ante*, pl. 458.

from which she was wrongfully discharged: the Sessions have decided that it was not a dissolution of the contract; and I cannot say that they have decided wrongly. — BAYLEY J. It would be much better if the Sessions would decide the fact, whether of the dissolution of the contract, or of the dispensation of the service, and abide by their decision, without sending up a case with the evidence on which they formed their conclusion. In *The King* v. *Grantham* there was the consent of both parties at one time to put an end to the contract, and the master wishing the next day to retract his consent could not alter the case. But the question here is, whether a wrongful act of the master can dissolve the contract without the consent of the servant. It would operate very unjustly if it could, for then masters would often be induced to discharge their servants on frivolous pretexts towards the end of the year, to prevent them from acquiring settlements. — Order of Sessions confirmed.

A servant, before the end of his year, applied for his *discharge*, which the master refused, unless the servant could get another man in his place; the servant accordingly procured another, upon certain wages agreed upon between them; and then left the service, and hired himself as a day-labourer for the remainder of the year. These facts are sufficient evidence of a dissolution of the contract.

Where there is conflicting evidence for the Sessions to decide upon, and they draw a conclusion one way, the Court will not disturb it.

(a) *Ante*, pl. 431.

473. *Rex* v. *Mildenhall*, *T. T.* 50 *G.* 3. 12 *East*, 482. — Removal from *W.* to *M.* Order confirmed, subject, &c. — The pauper, being settled at *M.*, agreed with *J. S.* of *W.*, to serve him for 12 months at certain wages, and served his master under the agreement till within 11 weeks of the expiration of the year. The pauper, not behaving as he ought, and neglecting his business, his master and he had a dispute, in consequence of which the pauper asked his master to discharge him; but he answered he would not, unless the pauper would get another man to stand in his stead. The pauper accordingly got *W. R.*, to whom he agreed to give 1*l.* 11*s.* 6*d.* out of his own pocket to take his place, besides his wages, which were to be paid to him by the master. The pauper stated, that when he brought *R.* to his master, he said, "If this man "does any otherwise than well, I can send for you and make you "serve your time out;" to which the pauper replied, "Very well." On the contrary, the master stated, that, "he did not recollect "having said to the pauper that he should expect him to return; "that it was not his intention to have him back; and that they "parted on bad terms." The 1*l.* 11*s.* 6*d.* was paid by the pauper to *R.* at the time he entered the service, and *R.* served out the remainder of the year with *S.* at *W.*, and received the wages from him for that time. The pauper, during the remainder of the year, hired himself as a day-labourer in the adjoining parish, and occasionally slept at *W.* *R.* continued to serve *S.* under a new agreement till the end of the year. — It was contended against the orders that the Sessions had received evidence of the master's *intention*, which was illegal: and they cited *R.* v. *Goodnestone*. (a) — LORD ELLENBOROUGH C. J. The case of *R.* v. *Goodnestone* was an express case of dispensation of service, and the servant might have returned within the year. But let us see whether, in this case, the justices might not reasonably draw the conclusion which they have done, that what passed between the master and servant was a discharge of the latter. The pauper, in consequence of his ill behaviour, had a dispute with his master, and desired to be discharged; the master refused, unless the pauper would get another man to stand in his stead: another man was accordingly procured, and brought to the master. And then, according to the pauper's evidence, the conversation between them is this; the master said, "If this man does otherwise than well, I can send for

"you, and make you serve your time out." The pauper answered, "Very well." *In contradiction* to this evidence, (for so the Sessions must be taken to have understood it by the manner of their stating the case; for they say, *on the contrary*,) the master swore that he had no recollection of having said to the pauper that he should expect him to return. This was evidence to impeach what the pauper had sworn, of which the Sessions were to judge; and then what follows is not giving evidence of the master's *intentions*, but is merely stated by the master, in confirmation of his accuracy in not recollecting what the pauper had stated him to have said; as if the master had said that what confirmed him in supposing that no such conversation passed, was, that he had no intention to take the pauper back. The Sessions evidently understood what the master said, as importing a contradiction to the evidence of the pauper: and can we say that they did wrong in drawing that conclusion? The pauper then left the service 11 weeks before the expiration of the year; the master agreeing to his discharge, upon his getting another man to serve in his stead, whom he did procure, and who did accordingly serve: and the pauper himself entered into another service. And though it is said that the pauper might have returned at a day's notice if recalled, I do not think that varies the case. According to the master's account, it was a case of dissolution of the contract, and the Sessions have drawn that conclusion, and we cannot say that it is wrong. — GROSE J. The pauper, upon the quarrel with his master, applied for his *discharge;* the master refused, unless upon condition that the pauper procured another person to serve in his stead, and the pauper complied with the condition. And then the Sessions, contrasting the master's evidence with the pauper's, have drawn the conclusion that he was discharged, and that the contract was dissolved; and we cannot quarrel with that conclusion which it was competent for them to draw. — LE BLANC J. Though the statute has said that no settlement shall be gained by a servant, unless there be a contract of hiring for a year, and a ervice for a year; yet the cases have decided, that if the servant e absent from the service any part of the year, with the leave of is master, he shall still gain a settlement. Therefore, it always ecomes a question of fact in these cases, Whether the absence be ccounted for by a dispensation of the service, or by a dissolution f the contract of hiring? Here the Sessions have concluded that he contract was dissolved; but they have also stated the evidence n which they drew their conclusion; and we are now called upon o say whether that conclusion were wrong. The pauper and his aster quarrelled: the pauper applied to be discharged, the master bjected, unless the pauper got another man to stand in his stead; e therefore consented, if the pauper did get another man: the auper got another man who served out the time. Was it not ompetent for the Sessions, on these facts, to conclude that he was ischarged? But the pauper was asked what passed at the time; nd he said that his master said, that if the man did otherwise than ell, he (the master) could send for the pauper, and make him erve out his time; to which the pauper assented. The master, owever, when questioned, did not recollect any such thing to ave passed, and he assigned a reason why it could not probably ave passed: and the Sessions, taking the whole together, con-

sidered his evidence as a contradiction of what the pauper had sworn to have passed, and drew their conclusion accordingly; by which it appears that they did not give credit to the pauper's account. Then it is said that the pauper only engaged as a day-labourer, and could have returned again into the service if recalled, but that is no confirmation of his account, for the time of year did not render it likely for him to engage in any other kind of service. There is nothing, therefore, to show that the conclusion drawn by the Sessions was wrong, and unless we could see clearly that it was so, we should not reverse it. — BAYLEY J. There was conflicting evidence for the Sessions to decide upon; and this being a matter of fact rather than of law, and they having drawn their conclusion from the evidence, we cannot say it is wrong. — Orders confirmed.

A master consents to his servant's *leaving his service*, two days before the expiration of his year, and pays him his full wages: Held, by three Judges, clearly a dissolution of the contract, by one Judge, that the Sessions might have drawn from these facts a conclusion that the master had dispensed with the service of the servant for the remaining day of the year.

474. *Rex* v. *Maidstone*, *T. T.* 50 *G.* 3. 12 *East*, 550. — Removal from *M.* to *T.* Order quashed, subject, &c. The pauper hired himself for a year to *S. T.* of *T.*; and entered upon his said service, and continued in it till two days before the expiration of the year, when (he being married on that day) *his master consented to his leaving his service*, and paid him his wages; subtracting nothing therefrom on account of his leaving his service, and the pauper the next day hired himself to another master. — LORD ELLENBOROUGH C. J. This was clearly a case of dissolution of the contract of hiring; and when the legislature has given us a rule to go by, it is better to abide by that. I should have been sorry in any case to have originated the question of dispensation of service; but it has been established to a certain extent by the decisions, and so far let it stand; but I will not extend it further. Here, however, there is no authority right or wrong, for extending it; for it is stated that *the master consented to his servant's leaving his service*; and I know not in what stronger terms a servant could answer in a plea to an action by the master against him for deserting his service; the master would undoubtedly be bound by such a plea, and would not venture to demur to it. Then, though the opinion of the parties is not to be pressed, yet their acts are material upon the question of dispensation or dissolution; and here it is stated, that after the pauper had left his first master's service he went on the following day, which was the day before the year expired, and hired himself into the service of a new master. Here, then, we have an express renunciation on the part of the master of his rights over the servant two days before the end of the year; and the servant's assent to this, signified by his departure from the service, and contracting the next day an obligation to another master, in whose service he entered immediately, subject to all the rights of the new master over his servants. How, then, can I say in the words of the statute of *William*, 8 & 9 *W.* 3. *c.* 30. that there was *a continuing and abiding* by the servant *in the same service during the space of one whole year*, when it appears that that period of service was abridged by the two last days of the year? It would, I think, be contravening the clear commands of the legislature, if we did not hold this to be a dissolution of the contract. — GROSE J assented. — LE BLANC J. Upon the facts of the case, as it appeared at the Sessions, I think they would have been well founded in finding, as a fact, that this was a dispensation of the service on the part of the master, and

not a dissolution of the contract; for, according to the cases, it is always a question for the Sessions to decide, Whether the consent of the master to the servant's leaving his service a few days before the end of the year for a particular purpose, but paying him his whole year's wages, be a dispensation of the service for the remainder of the year, or a dissolution of the contract? Here the servant wanted to marry, and one entire day before the end of the year the master gave him leave to marry and go away from his service. It was a fair and reasonable conclusion to draw, that if the servant wished to go away one day before the end of his service for the purpose of marrying, the master would have no objection to dispense with his service, and give him a holiday for that one day; for it must be observed, that the service would have ended on the 9th, and the servant left his master's service on the 8th. But the Sessions not choosing to draw this conclusion themselves, which I think they might have done, send the case to us upon the dry facts stated, and have not found that the master did consent to give his servant a holiday, and to dispense with his service for the remaining day of the year, but merely state as a fact, that the master consented to his *leaving his service*. Under these circumstances, I cannot say that the Sessions have done wrong in quashing the order of removal to *T.*; though I think they might have drawn a different conclusion from the facts of the case. — BAYLEY J. It appears to me that the Sessions have done right in quashing the order of removal as they have done. In order to constitute a case of dispensation of service, I think the master should have power to recall the servant to his service all through the year; but where the master agrees generally to let the servant go away from his service, without reserving to himself the right of recalling him throughout the whole year, I think that puts an end to the contract of service altogether. — Order of Sessions confirmed.

475. *Rex* v. *Barton-upon-Irwell* (*a*), *H. T.* 54 *G.* 3. 2 *M.* & *S.* 329. — Removal from *P.* to *B.* Order confirmed, subject, &c. The pauper being settled in *B.*, and being unmarried, was hired for a year as a servant to one *W.*, of *G. L.*, whom he served for about 19 months there. After having been in that service about two months, being then married, he was taken before a magistrate, on the complaint of his master, and committed to the house of correction for one month. When he had been in custody nine days, at the instance of his master, he obtained a discharge from his imprisonment, returned immediately to *G. L.*, and served him as before. On such return no mention was made of the terms on which he was to serve. He received no wages for the time he was in custody. The case then set forth the warrant of commitment, by which it appeared that the pauper had been charged upon the oath of *W.* with divers misdemeanors, and not acting in his service as a servant ought to do, and particularly in using a horse of his master's in a cruel and inhuman manner, and also with disobeying and neglecting the orders of his master, contrary to the statute: that the justice had convicted him of the offence so charged against him, and had sentenced him to be imprisoned in the house of correction, and there kept to hard labour for one month. — *Paley*, in support of the order of Sessions contended

Where a servant under a yearly hiring served two months, and was then committed and imprisoned under stat. 20 G. 2. c. 19. for misbehaviour to his master, and after nine days' imprisonment, was upon the application of his master discharged, and returned to him and served him as before, and no mention was made of the terms on which he was to serve, and he served in the whole

(*a*) See Rex *v.* Hallow, *post*, pl. 478.

from the time of the hiring for about 19 months: Held, that the commitment and imprisonment were not a dissolution of the contract, or such an interruption of the service as to prevent a settlement, and therefore he gained a settlement by such hiring and service, although he was married when he returned to his master, and received no wages for the time he was in custody.

(a) *Ante*, pl. 450.

that the commitment of the pauper operated as a dissolution of the contract, and that as the pauper was married at the time of the commencement of the second service, that service could not be referred to any new contract capable of conferring a settlement, and cited *Rex* v. *North Cray*. (a) — *Scarlet*, contrà, referred to stat. 20 *G.* 2. *c.* 19., which empowers magistrates to punish servants either by commitment to the house of correction, or by abating some part of their wages, *or by discharging* them from their service. — LORD ELLENBOROUGH C. J. It would be clearly against the policy of the law if the servant by his own act of delinquency should have the power of dissolving the contract. The justices have that power, but they have not exercised it. The imprisonment of the servant was so far from being a cessation of the service, that perhaps his labour might have been required of him by the master, even while he was in prison. Then what farther circumstances appear on this case? It is stated that the master deducted the wages for the period during which the pauper was absent. But after that period he returns into the service, (then, indeed, he was married, but he goes on under the old contract,) and nothing passes between the master and servant with respect to any alteration, or any new contract, during the remainder of the 19 months. The master, indeed, had an election to avoid the contract, but he made his election to continue the pauper in his service, which it was in his power to do. In *Rex* v. *North Cray* there was an incomplete service. — LE BLANC J. The pauper, being single when he was hired, was capable of gaining a setttlement, and his marriage during the year will not prevent it. It appears, that in consequence of his misusing a horse, a complaint was made against him by his master, and he was committed; but at the end of nine days his master applies to have him released, and takes him back without any fresh agreement, and he goes on upon the footing of the original hiring until the end of the 19 months, but he receives no wages for the time he was in custody. On this statement I think there was not any dissolution of the contract; the master might have discharged him, but he did not: he must then have returned on the footing of the old hiring. It is said, indeed, that there was an interruption of the service, but during the whole time he was subject to his master. It was under the authority of the contract that his master acted when he punished him for misconduct; therefore it was not a dissolution. The master might, perhaps, have elected to dissolve it, but he has not done so. Neither do I think this was an interruption of the service to prevent a settlement. — BAILEY J. The relation of master and servant continued, notwithstanding the commitment of the servant procured by the master. The commitment did not set free the servant from his contract to go wherever he pleased after the imprisonment ceased. That would be allowing him to avail himself of his own wrongful act. Then, as to the service during the nine days, perhaps the servant could not strictly be said to be actually serving while in prison, *but there was a service for more than a year under a hiring for a year.* — DAMPIER J. It seems to me that the master had no intention of dissolving the contract, for, instead of that, he hastens back the return of the servant by begging off his punishment for the whole of the period, except nine days. — Orders quashed.

476. *Rex* v. *Bray*, *T. T.* 54 *G.* 3. 3 *M.* & *S.* 20. — Removal from *B.* to *G. M.*—Order quashed, subject, &c. The pauper, being settled in *G. M.*, at *Old Michaelmas* 1806, hired himself for a year to one *H.* He continued to live with *H.* in *C.*, until 28 days before the expiration of the year, at which time *H.* gave up his farming business, sold his stock by public auction, and paid off and discharged the pauper, and all the other servants in husbandry, paying them their full wages: and he also then told the pauper and the other servants that they might go where they liked. The pauper having accepted his wages, took away his clothes and left *H.*'s house, and worked with another person with *H.*'s knowledge during the 28 days which formed the remainder of the year. — LORD ELLENBOROUGH C. J. We take it that the Sessions did hold this to be a dispensation; but then a question occurs, Why did they so? What is to be the limit to this doctrine of dispensation if it is to be carried thus far? It should seem as if the master might, at the end of a day, or a fraction of a day, if he has no longer occasion for his servant, send him away, and thereby dispense with the whole year's service. But is not this absurd? Where, indeed, the relation of master and servant continues, but the master foregoes the benefit of actual service for part of the time, that has been held a dispensation; but here is every thing which can be predicated of a dissolution of the contract, for the master paid off and discharged the pauper with the rest of his servants, and the pauper left the house, and engaged himself with another master during the remainder of the year. I cannot but say that I am sorry for some of the cases on this subject, which have created such an artificial system. I think that not only the decision of the Sessions in this case is unreasonable, but that several of the cases on which it professes to stand are unreasonable also. — LE BLANC J. *Rex* v. *St. Bartholomew* (*a*), was under special circumstances. Here the pauper, after quitting the service of *H.*, worked under a distinct engagement; and though not such an engagement as would gain him a settlement, still it was inconsistent with the continuance of his former contract. — BAYLEY J. The moment the pauper quitted the service he was to be at full liberty to contract a new relation, and he did so. — DAMPIER J. The master pays him his wages, and tells him to go whither he liked, and the pauper accepts his wages, and contracts a new relation during the time. — Order of Sessions quashed.

Where the master of a servant under a yearly hiring, 28 days before the end of the year, gave up his business, sold his stock, and paid off and discharged the servant, with all his other servants, paying them their full wages, and telling them to go where they liked, and the servant took his wages, left the house, and worked with another person, with the master's knowledge, during the 28 days: Held, that this was a dissolution of the contract, and it appearing, upon the case stated by the Sessions that they had proceeded on the ground of its being a dispensation, though the Sessions did not find that as a fact, this Court quashed the order of Sessions.

(*a*) *Ante*, pl. 445.

477. *Rex* v. *Polesworth*, *E. T.* 59 *G.* 3. 2 *B.* & *A.* 483. — Removal from *K.* to *P.* — Order confirmed, subject, &c. — The pauper was hired by *H.* of *P.* for a year, commencing from the day after *Falseley* fair, the *Tuesday* after *Michaelmas-day*. The pauper remained in the service at *P.* till a fortnight before *Michaelmas* in the following year, when he went to *Middleton* statutes, having previously asked his master's leave, who refused to let him go there. The following day the pauper asked his master what work he was to do; the master told him that he might go where he had been the day before, and that he would not employ him any more. The pauper asked the master to pay his wages, and said if he did, he would go. The master refused, and said he would obtain a summons, which he did; but neither of them attended the magistrate on that summons. The pauper left his master's house on the day the summons was served; two days

Where a pauper being hired for a year, and having served till within a few days of the end of the year, went, without his master's leave, to the statutes to hire himself for the next year; and on the master's dismissing him for that, went before a magistrate with his

master, and there offered to serve his year out; but upon receiving his full year's wages was satisfied, and did not return to his service; but neither hired nor offered to hire himself into any fresh service till the year had expired: Held, that this amounted only to a dispensation with his service for the remainder of the year, and that he thereby gained a settlement.

afterwards, the pauper called at his master's house; and the same day they both went to *P.* statutes, when the pauper hired himself to a new master, from the day after the next *F.* fair. On the day after *P.* statutes, the pauper summoned his master before the magistrate. When before the magistrate, the pauper, in answer to a question put to him by the magistrate, said he was willing to serve his time out; but the master said he would not take him again. The magistrate then directed the master to pay the pauper his whole wages; which the pauper took, and was satisfied; and went to his grandfather's, where he remained till the day after *F.* fair, when he entered upon his new master's service. The cases of *Rex* v. *Leigh* (*a*), and *Rex* v. *King's Pyon* (*b*), were cited. — ABBOTT C. J. It seems to me, that the Court of Quarter Sessions were quite right in refusing to consider this as a case in which the contract between the parties was dissolved. There can be no dissolution without a mutual consent of the parties, or some justifiable cause of complaint on the part of the master; but here he quarrelled with the pauper without sufficient reason, for the pauper had done no more than according to *Rex* v. *Islip* (*c*), he had a right to do. There was, therefore, no justifiable ground for dismissal. Then is there any mutual consent? It appears that the parties went before a magistrate, and the pauper then stated that he was willing to continue in the service; the master, however, peremptorily refused, upon which the pauper, after receiving his full wages, said that he was satisfied; but he neither contracted nor offered to contract any other service. And I think that there is nothing in this case to show, that if on the following day his master had ordered the pauper to return into his service, he would not have been bound so to do. I think, therefore, that the order of Sessions was right. — BAYLEY J. The case of *Rex* v. *Islip* seems to me to be in point. There the servant, as in this case, after having been refused permission to go to the statutes for the purpose of getting another place, went without such permission; and the master refusing to receive him back, the Court held that it amounted only to a dispensation, and not to a dissolution of the contract. In the two cases which have been cited, the servant either contracted, or offered to contract, a service with another master, and that materially distinguishes them from the present case, as appears from *Rex* v. *Hardhorn with Newton*, (*d*). The only grounds for deciding in favour of a dissolution, are, either mutual consent or some wrongful act of the servant; but here all that is stated is a wrongful act on the part of the master. And as to the servant stating that he is satisfied, that is easily to be explained; for his whole wages being paid, he was satisfied that the remainder of his service should be dispensed with.—HOLROYD J. There is nothing in this case stated to show, with sufficient distinctness, that the servant consented to put an end to the contract. I think that his not having contracted any other service before the end of the year inconsistent with his return to that of his master distinguishes this case from those which have been cited. — BEST J. concurred. — Order of Sessions confirmed.

(*a*) *Ante*, pl. 471.
(*b*) *Ante*, pl. 468.
(*c*) *Ante*, pl. 425.
(*d*) *Ante*, pl. 472.

Where a master, who had hired a servant for a year, at

478. *Rex* v. *Hallow*, *E. T.* 5 *G.* 4. 2 *B.* & *C.* 739. — Upon an appeal against the removal of *Hewett*, *E.* his wife, and two children, from *P.* to *H.*, the Sessions confirmed the order, subject, &c. The pauper, *Hewett*, gained a settlement in the parish of *H.*

about 14 years ago, by a hiring and service for a year in that parish. At the expiration of that service, the pauper went into the service of one *P.* of the parish of *T.*, having been previously hired by *P.* at *P.* mop, a few days before *Old Michaelmas*, when the pauper's service in *H.* expired, to serve him the said *P.*, as waggoner's boy, from the said *Old Michaelmas* to the *Old Michaelmas* following, at the wages of 5*l.* The pauper went into the service of the said *P.*, according to this hiring, and remained with him, serving in the parish of *T.*, till about a month before the *Old Michaelmas-day* at which his service with *P.* was to end, according to the said hiring; when disputes having arisen between *P.* and the pauper, in consequence of his having charged the pauper with misconduct, *P.* caused the pauper to be summoned to answer such charges before *P. G.*, one of the justices of the peace for the county of *W.* *P.* and the pauper appeared before *P. G.*, and the complaint was accordingly heard, and upon the hearing it was agreed between *P. G.* so being such justice as aforesaid, and *P's.*, that the pauper should either beg his (*P.*) pardon, and be received back into his service again, or if the pauper refused to beg his pardon, that he should remain the rest of his year in prison. The pauper refused to beg *P.'s* pardon, whereupon he was committed to the house of correction, to be there kept to hard labour for one calendar month. The year for which the pauper had been so hired, expired two days before the expiration of the calendar month for which he was committed. The pauper remained in the gaol during the whole of that month, and left the gaol at the expiration thereof. During the time of his imprisonment, the pauper's clothes remained at the house of *P.*, in *T.*; and when the pauper left the gaol, he went to *P.'s* house, and took away his clothes, and received from *P.* all his wages, with the exception of 7*s.*, which *P.* deducted for the time the pauper had been in gaol, and he then quitted *P.'s* house. — ABBOTT C. J. I am of opinion that there was a complete service for a year, notwithstanding the commitment under the 20 *G.* 2. *c.* 19.; but I wish to be understood as speaking of a commitment under that statute only. The second section is for the punishment of servants in the character of servants. It gives the magistrate power to put an end to the service, if he thinks fit: when that power is exercised it puts an end to all question of settlement. But the statute gives another power also, viz. that of imprisoning the offending party for any period not exceeding one month. If an imprisonment for a month, under that provision, defeats the settlement, imprisonment for a week, or even for a day, must have the same effect. There is nothing to show that the legislature contemplated or intended to produce such an effect. I therefore think, that a servant committed under the statute in question must be considered as abiding in the master's service, within the meaning of the 8 & 9 *W.* 3. *c.* 30. It follows, that in this case the pauper gained a settlement in *T.*, the order of Sessions must, therefore, be quashed. — BAYLEY J. I am of opinion that this case falls within the distinction taken by *Le Blanc* J., in *Rex* v. *Barton-upon-Irwell.* (*a*) He there says, "It was under the "authority of the contract that his master acted when he punished "him for misconduct, therefore, it was not a dissolution." So here the pauper was imprisoned at the instance of the master.

the expiration of 11 months made a complaint against him before a justice of peace, and the latter, under the provisions of the 20 G. 2. c. 19. s. 2., committed the servant to the house of correction for one calendar month, which did not expire until after the end of the year for which he had been hired: Held, that this was an abiding in the master's service for a whole year within the meaning of the 8&9 W. 3. c. 30., and that the servant thereby gained a settlement.

(*a*) *Ante*, pl. 475,

The latter might have pressed for a dissolution of the contract, but, instead of that, there was an understanding between him and the justice, that the pauper should either beg his master's pardon or remain the rest of the year in prison. It has been conceded that that does not operate as a dissolution, and I think it may be put either as a constructive service or a dispensation. In the case cited it was held, that the servant gained a settlement, and I cannot see why the imprisonment should have a different effect at the end from that which it had in the middle of the year. It has been urged in argument, that the master, by taking the servant back, is to be considered as dispensing with his service during his absence. But the contract not being dissolved, if the servant were released from prison before the end of the year, the master would be under the necessity of receiving him. For these reasons I am of opinion, that the pauper gained a settlement in *T.*, and that the order of Sessions must be quashed. — HOLROYD J. There is a great difference where the servant's absence from actual service arises, as in this case, at the instance of the master, and where it is occasioned by any criminal act done by the servant, and independently of the master. The ground of the commitment of the servant was absence from his duty for a day: possibly the master might have had a right to discharge him for that neglect, but he neither did that of his own authority, nor applied to the justice to do it, so that the relation of master and servant continued. I think that the service also continued, just the same as if the occurrence had happened in the middle of the year. The servant being imprisoned and punished as a servant, might have insisted upon going back to his master, or the master might have compelled him to return, as soon as he was discharged out of custody. — LITTLEDALE J. In this case, neither the master nor the justice having discharged the servant, the relation of master and servant continued. Then the servant, when in prison, did not absent himself voluntarily from the master's service. The imprisonment was at the instance of the master, the servant might still be ready and willing to work for him. I am, therefore, of opinion, that it must be considered as a constructive service, and sufficient to gain a settlement in *T.* The order of removal to *H.* was, therefore, bad. — Order of Sessions quashed.

A pauper was hired to serve for part of a year. Three weeks before the expiration of the period of service, the mistress asked the pauper to stay again. The pauper replied that she had no objection if they could agree about wages. They did agree for 3*l.* 10*s.*, and 1*s.* earnest

479. *Rex* v. *Market Bosworth*, *E. T.* 5 *G.* 4. 2 *B.* & *C.* 757. — Upon an appeal against the removal of *H. S.*, single-woman, from *F.* to *M. B.*, the Sessions confirmed the order, subject, &c. — The pauper was hired by, and lived with Mrs. *W.* in the parish of *M. B.*, from *Shrove Tuesday* 1821, until *Old Michaelmas-day* following. Three weeks before the last-mentioned day, Mrs. *W.* asked the pauper "to stay again," to which she replied, that she had no objection if they could agree about wages; they agreed for 3*l.* 10*s.*, and 1*s.* earnest was paid. At the hiring nothing was said as to the time for which the pauper was to serve. There was no interval between the first and second service. A fortnight before *Old Michaelmas* her mistress said to her, "*Hannah*, I *have* hired "you, but mentioned no time; remember you are hired for 51 "weeks." To this the pauper said, "Very well." The pauper lived with Mrs. *W.* until *Old Michaelmas-day* 1822. *She asked to have her week just before Christmas.* Mrs. *W.* said, "You shall "have three or four days now, I cannot spare you the whole week."

She staid away three successive days and nights then, and had the other four days at different times during the year, returning on each of them to sleep at her mistress's, and her mistress gave her two or three holidays besides. She never was absent without her mistress's permission, and always returned into the service, and at the end of the year received her wages. — BAYLEY J. The question in this case ought to have been decided by the Court of Quarter Sessions, but inasmuch as great expence has been incurred we will pronounce our judgment upon the facts stated in the case. And I am of opinion that a settlement was gained in *M. B.* It appears, that three weeks before *Old Michaelmas*, the mistress asked the pauper to stay again, to which she replied, that she had no objection if they could agree about wages; they did agree for 3*l.* 10*s.*, and 1*s.* earnest was paid. Now, it is quite clear, that that constituted a general hiring for a year, and the question is, Whether the subsequent conversation between the mistress and the servant amounted to an alteration of the original bargain, so as to convert that which had been a hiring for a year into a hiring for 51 weeks only, or whether it was a dispensation by the mistress with one week's service? Now it is laid down in Mr. *Nolan's Treatise on the Poor Laws* (*a*), that where the absence of the servant takes place on the master's account and at his request, the Courts have been inclined to infer a dispensation, inasmuch as the absence originates with him in whom the power of dispensation is vested, and is only acquiesced in by the servant. Now, apply that rule to the present case. There having been a general hiring for a year, the mistress afterwards states to the servant that she had hired her, but that she had mentioned no time, and desires her to remember that she was hired for 51 weeks. The servant made no overture to the mistress for a change of the original agreement. According to the above rule, therefore, this ought to be construed to be a dispensation: the mistress acknowledges that there had been a hiring, and if she intended to explain the original agreement, her explanation of it was false; for, in the first instance, there is a hiring for a year at an entire sum of 3*l.* 10*s.*, and there is no stipulation afterwards that the pauper was to be paid wages for 51 weeks, at the rate of 3*l.* 10*s.* for the whole year. I think, therefore, that there was no alteration of the original bargain, but that there was a dispensation with the service of the pauper for one week, and I think that the Sessions were warranted in considering this either a case of dispensation or of fraud. I cannot distinguish this case from that of *Rex* v. *Sulgrave*. (*b*) There the pauper was hired in *February* to serve till *Old Michaelmas*. On the *Friday* before *Old Michaelmas*, his master asked him if he would stay again, the pauper said he would if they could agree about wages, and asked 5*l.* 5*s.*, which the master thought too much. Afterwards the master said he would give him 5*l.* 5*s.*. and he gave him 1*s.* in earnest; but while he was putting his hand in his pocket for the shilling, he said, you shall go away a fortnight before *Michaelmas*, because of your settlement, and that he would give him that time to get what he could, to which the servant assented. It was held that this was a mere dispensation with the service for that time, and not such an exception out of the original contract as would make the hiring insufficient for the purpose of gaining a settlement; and *Ashhurst* J. in delivering his judgment,

was paid; nothing was then said as to the time for which the pauper was to serve, but a week afterwards the mistress said to the pauper, "I have hired you, but mentioned no time; remember that you are hired for 51 weeks," to which the pauper assented: Held, that this was a good hiring for a year.

(*a*) Vol. i. p. 399.

(*b*) *Ante*, pl. 454.

said, "that the contract was complete before any thing was said "relative to the fortnight's absence; and that this was a dispens- "ation with the service, and not an exception out of the original "contract. An exception is a stipulation on the part of the "person for whose benefit it is introduced, but here it was not "made at the request of the servant, but on the offer of the "master." Upon the authority of that case, as well as upon general principles, I am of opinion that the Sessions were warranted upon these facts, in coming to the conclusion that there was a hiring for a year; and that there was no exception in the contract of hiring, but a mere dispensation by the mistress with one week's service: and I think, therefore, that the order of Sessions ought to be confirmed. — Order of Sessions confirmed.

XIV. *Of Evidence of Hiring and Service.*

The declaration of the pauper's father made to his wife respecting his having been hired for a year, and served it in a particular parish, is admissible evidence in an inquiry into the settlement of his son. But see Rex v. Frystone, *post*, pl. 487. and Rex v. Chadderton, *post*, pl. 890. *contrd.*

480. *Rex* v. *Nutley*, *E. T.* 12 *G.* 3. *Burr. S. C.* 701. — Two justices removed *J. M.* from *N.* to *B.*, but the Sessions quashed the order, and stated the following case: *J. P.* was hired, in the presence of *T. M.*, since deceased, the pauper's father, by *T. S.*, of the parish of *B.*, to serve for a year as under-carter to *T. M.*; when it was agreed, that *J. P.* and *M.* should come into the service of *S.* on the day after *Michaelmas-day* then next; that *P.* and *M.* did accordingly come into the service of *S.* on the day after *Michaelmas-day*; that *P.* served *S.* during the year, as under-carter to *M.*; that then *P.* and *M.* left the service of *S.*; that he, *P.*, received his year's wages; and that *J. M.*, the pauper, never gained any settlement in his own right: That *R. M.*, the widow of *T. M.*, deposed, "That her late husband, the *Mi-* "*chaelmas-day*, in the morning, after *T. M.* left the service of "*T. S.* of the parish of *B.*, told her he had hired himself to "farmer *J. S.* in the parish of *Ilsfield*; and had likewise told her, "that he went into the service of *J. S.* in the parish of *I.*, at the "*Michaelmas*, in consequence of such hiring; and that he con- "tinued in his service till about a month before the *Michaelmas* "following; at which time, to wit, about a month before *Michael-* "*mas-day*, the said *S.* turned him going; and that he also told "her, that he was so turned away because he should not gain a "settlement in the parish of *I.*; but did not tell her that the said "*J.* did give that or any other reason for turning him away." And the said *R.* further deposed, "That *T. M.* frequently told "her he was turned away against his will." And the said *R.* further deposed, "That she was married to *T. M.* at *Easter*, in "the year in which *T. M.* told her he was in the service of the "said *J.*; and that she twice saw him, during the said year, in "the service of the said *J.*; and during that year, till his being "turned away, considered him in the service of the said *J.*" That so much of *R. M.*'s evidence as related to the declarations of her husband's evidence, being considered by the Court as mere hearsay, was rejected, as not being admissible in evidence. — LORD MANSFIELD held the settlement in *B.* to be sufficiently proved: there is evidence enough, both of a hiring for a year, and of a service for a year: besides, the Court should lean, he said, in favour of settlements. — ASTON J. likewise held the settlement to be in *B.*: he thought the hiring for a year in that parish to be

sufficiently proved; and, consequently, that the Sessions had done wrong, in determining that a hiring for a year was *not* proved. — He also thought them in the wrong, for rejecting the evidence of *R. M.*; for the widow's account of her family ought to have been received: but he was of opinion, that if it had been received, it would not have amounted to a proof that the turning the man away a month before the time was fraudulent; consequently it must have appeared, upon the whole evidence given by this man's widow, that he had not gained a subsequent settlement in *I.* — The order of Sessions was quashed.

Evidence of a pauper's having lived in the capacity of an ostler, and of his having said that he was settled in the parish, will support the inference that he was hired for a year.

481. *Rex* v. *Holy Trinity, in Wareham, H. T.* 22 *G.* 3. *Cald.* 141. — The case stated, that it was proved, that the pauper's husband was born in the parish of *B. R.* in the county of *D.*; and it was also proved by the pauper, *E. S.*, that her husband was abroad beyond sea, and had been so for two years past, if alive; that to her knowledge he lived in the capacity of an ostler with Mrs. *L.*, of the parish of the *H. T.* in *W.*, some years since deceased, at her house there, about two years, where she had seen him brew; but whether there was any agreement or hiring relating to such service, was not proved; but that she had heard her husband say, he was settled in the parish of the *H. T.* in *W.* — LORD MANSFIELD: The Sessions have drawn their conclusion, that he was hired, and I think they have done right. — BULLER J. Though the evidence is slight, there is nothing to contradict it. — WILLES and ASHHURST J. concurring, the rule was discharged, and both orders affirmed.

The declaration of a husband, as to facts concerning his settlement, seem to be admissible after his decease; but if the settlement depend on a written instrument, it must first be shown that inquiry has been made after the written instrument. — But see Rex v. Frystone, *post*, pl. 487. *contrd.*

482. *Rex* v. *St. Sepulchre, London, T. T.* 25 *G.* 3. EDITOR'S *MSS.* — *F.* and her three children, being removed from *B.* to *St. S.*, THE SESSIONS confirmed the order, and stated that the pauper was born in *St. L.*, that about 19 years since she married her late husband *C. F.*, who died about a year and a half ago; that some time before his death her said husband did, in her presence and hearing, inform the Secretary of the Lying-in-Hospital in the county of *M.*, that he was, before his marriage, a written articled servant for two years to *S.*, in the parish of *St. S.*, and that he duly served him in the said parish two years under the said articles; that the service was completed before his marriage with the pauper; that he worked at buckle-cutting, and received 1*l.* 1*s. per* week; and that he lodged and boarded in the house of his master, for which he paid 9*s.* a week. It also appeared that the master, *S.*, had been dead about 12 years, and that the pauper never saw the articles under which her husband served; nor were the articles produced at the hearing of the appeal; nor was any evidence given of any inquiry after them. — BEARCROFT showed cause. The only question is, on the admissibility of the evidence. It is not usual for this Court to enter into that question, or to interpose in a settlement-case, after the evidence has been received at Sessions, because the evidence might have been given. But this was good evidence, and it is an invariable rule at all Sessions to receive evidence of what the husband or father said, when dead, or run away, as to facts concerning the settlement, though not generally that he was settled. There are other exceptions to the general rule, that hear-say is no evidence. What a bankrupt says before the act of bankruptcy is evidence; as, when he declares an intention to abscond, although he cannot

be a witness to prove an act of bankruptcy. The master in this case had been dead 12 years; and there was no public repository where such agreements were kept, so that any inquiry after the articles now was idle: they cited the case of *Rex* v. *St. Michael, Bath* (*a*); and as to the case of *St. Saviour, Southwark* they said the probability was, that there was no indenture of apprenticeship; or, that it was not stamped: they also cited *Rex* v. *East Knoyle.* (*b*) — SYLVESTER and GOUGH, *contrà:* The practice at Sessions goes no farther than to show that the widow may be examined as to what the husband said, and the case cited only proves, that where an instrument is lost, or, from length of time, is presumed to be lost, parol evidence is in all cases required; and there cannot be one rule for *Westminster Hall*, another for one Sessions, and a third for another Sessions. Here the settlement depends on a written agreement, which is not produced, nor shown to be lost. The parish-officers ought to have gone a step farther, and enquired after the articles. But that inquiry is negatived, and therefore the evidence is not competent. — WILLES J. The first question is, Whether the declarations of the husband are admissible? In general, such declarations certainly are not; but the usage at Sessions is not so strict, and the only case cited on the subject seems to show that the usage is so. The declarations of a bankrupt are evidence only as to the *quo animo*, and do not apply here. On this point I think the order might be supported. But it is not necessary to give an express opinion; because on the other point the case seems to be weak; for it is found that no inquiry was made after the agreement, and what is said in the case of *St. M., B.*, is decisive to show that such inquiry is necessary. — ASHHURST J. There is no occasion to give an opinion on the first point, not that I should have any difficulty concerning it. On the second point, there is no rule better established than that *the best evidence* must be given: there were places here where an inquiry might have been made: the master's executors should have been applied to; or if, on inquiry, it had appeared that he had none, that might have been sufficient. — BULLER J. I am of the same opinion: the presumption is, that there were two parts of this agreement; but it is not even enquired whether the pauper had left any papers. Although it may be probable that the agreement would not have been found, yet an inquiry after it must be shown. As to the first point, what has been said of the declaration of a bankrupt does not apply. In the case of *St. Michael, Bath*, it was an examination before justices, and in *Rex* v. *East Knoyle* the fact was found; and the Court took them as found. — Order quashed.

(*a*) *Ante*, pl. 178.

(*b*) See *post*, pl. 598.

If a husbandman serve for a year, it is strong presumptive evidence that he served under a *contract of hiring* for a year.

483. *Rex* v. *Lyth*, *T. T.* 33 *G.* 3. 5 *T. R.* 327. — Two justices removed *T. C.* from the township of *W.* to the township of *L.* The Sessions on appeal confirmed the order, and stated the following case: On behalf of the respondents it was proved that the pauper was the legitimate son of *W.* and *M. C.*, and was born in *L.* On behalf of the appellants, in order to show a derivative settlement in the pauper from his father in a third township, it was proved that *W. C.*, before his marriage, was, a few days after *Martinmas* 1731, seen and known to be in the service of one *M. C.*, in the township of *B.*, in the said county, as a servant in husbandry; and was from time to time seen and known to act in

that capacity with *M. C.*, at *B.*, for some time, upwards of a year. Evidence was then offered, on behalf of the appellants, to prove that *M. C.*, who was long before dead, had declared in his lifetime that *W. C.* had been hired with him for a year; but the Court were of opinion that such evidence was not admissible. It was then also proposed to give evidence of declarations to the same effect by *W. C.*, who was also dead, touching such hiring; but the Court also refused to admit such evidence. Whereupon the Court, being of opinion that there was no evidence of a hiring for a year, confirmed the order, subject to the opinion of this Court upon the propriety of rejecting the evidence above offered of the declarations of *M. C.* and *W. C.*; and also whether, after rejecting such declarations, they had done right in refusing to infer the hiring from the fact of service proved as above stated. — When this case was called in the paper, LORD KENYON, addressing himself to the counsel who were to argue it, said, that the case was drawn up in too loose a manner for the Court to give any solemn judgment upon it; for in some parts of it evidence was stated instead of facts; and the Court were left to draw inferences which the magistrates below ought to have done. But that if the Sessions wished to know whether, from the evidence stated relative to the hiring of *W. C.*, they were at liberty to draw the conclusion of his having been hired for a year in fact, the Court had no hesitation in thinking that they might legally draw such an inference. He therefore thought that this advice of the Court might be given to the magistrates without the necessity of entering any regular judgment upon this case as it now stood, or putting the parties to the expence of stating the case again. — WOOD, in support of the orders, shortly stated, that it had been always understood, that in order to prove a settlement by hiring and service, it was essentially necessary to prove a contract between the parties; and that such contract could not be inferred merely from the act of service, which was the only evidence in this case. That this was so held in *Gregory Stoke* v. *Pitminster* (*a*), where the pauper "*served* her "grandmother four years on an allowance of meat, drink, washing, and lodging;" yet the Court held that, as there was no contract, no settlement could be gained. But if this sort of evidence were sufficient in the case cited, and a variety of others to the same effect, settlements might have been gained by merely proving the act of service for the year. — CHAMBRE, *contrà*, mentioned a case between the parishes of *Crowland* and *St. John the Baptist*, where, in answer to an objection that it did not appear on the face of the order that the pauper *was hired for a year* in *St. John's*, it only being stated that he was last legally settled there, "having served there one whole year with one *J. D.*;" the Court said, "He was last settled there. The justices need "not allege how he was settled there. And it being said he "served a year, *the law presumes he was hired for a year.*" — LORD KENYON C. J. In *Rex* v. *Pitminster* it appears that the pauper was taken out of charity; and, therefore, the presumption of a hiring was taken away. But this is the case of a servant in husbandry, whose service for a year affords very strong presumptive evidence of a hiring for a year. (*b*) But however strong that

(*a*) *Ante*, pl. 269.

(*b*) *Vide* Rex *v.* The Holy Trinity, in Wareham, *ante*, pl. 481., and Rex *v.* St. Matthew, Ipswich, *ante*, pl. 274.

presumption is, as only the evidence of the hiring is stated, and not the fact itself, we cannot decide upon the case; though the justices at the Sessions must be directed to draw the conclusion, that *W. C.* was hired for a year, from this evidence. — BULLER J. In *Rex* v. *Pitminster* the presumption of a hiring was rebutted by the peculiar circumstances of the case, but there is nothing of that kind here. — THE COURT ordered the case to be sent back to the Sessions.

If a servant live three years in service with the same master, it is presumptive evidence of *a contract of hiring* for a year, although at first the servant was only hired for part of the year.

484. *Rex* v. *Long Whatton*, *M. T.* 34 *G.* 3. 5 *T. R.* 447. — The pauper, *H.*, a lunatic, formerly acquired a settlement at *B.* by hiring and service: afterwards, in *March* 1780, she went to live with Mrs. *L.* at *D.*, to wait upon Mr. *L.*, who was poorly; and she continued there till Mrs. *L.*'s death, which happened two or three years afterwards. On the day of her going to Mrs. *L.*'s, she told her brother-in-law, *J. P.*, that she was hired till the following *Michaelmas*, with liberty to part on a month's wages or a month's warning, and had received 2*s.* 6*d.* earnest. She made the same declaration to one *T. F.*; and at another time, when her sister was just dead, and she was uneasy about her own situation, upon the said *T. F.* telling her she must be provided for somewhere, and asking her if she knew where she belonged, she said she belonged to *D.*, where she had been hired, and received 2*s.* 6*d.* earnest. She made the same declarations to *P.*; but to neither of them did she ever mention any second hiring to the said Mrs. *L.*, or any thing about her situation with Mrs. *L.*, but what is mentioned above. Both *P.* and *F.*, during the time of her being with Mrs. *L.*, repeatedly saw the pauper waiting upon her, and acting as her servant. The respondents objected to the admission of the declarations of the pauper in evidence; but the Court received them, and were of opinion upon the whole evidence, as well those declarations as the rest, that the pauper had gained a settlement at *D.* — LORD KENYON C. J. Independently of the declarations made by the pauper, there was sufficient evidence to warrant the justices in finding a hiring for a year in *D.*; for though the pauper was at first only hired till the *Michaelmas* following, yet she continued in the same service for three years. — The counsel not desiring to have the case sent back again to the Sessions, the order of Sessions was confirmed.

If a servant, after serving a year, part of which was under a *retrospective hiring*, continue in service another year, *a contract of hiring* may be presumed.

485. *Rex* v. *Hales*, *T. T.* 34 *G.* 3. 5 *T. R.* 668. — *M.* being legally settled in *W.*, a fortnight after *Old Michaelmas* 1792, heard from Miss *G.*, of *B.*, that her father, Mr. *G.*, of *H.*, farmer, wanted a servant; and agreed with her to go to Mr. *G.*'s a month upon liking; she went thither accordingly, and in the spring following Miss *G.* told the pauper that if she behaved well, and did her work properly, she should have 4*l.* for a year. The pauper continued in Mr. *G.*'s service, without any other agreement, until the *Christmas* following, when she quitted the service; but a fortnight after *Michaelmas* 1793, she received 4*l.* for a year's wages then due; and for the remainder of the service from that time she received 1*s.* 6*d.* a week, being the proportion of wages then due at the rate of 4*l. per annum*. — LORD KENYON C. J. At present the case is so imperfectly stated that we cannot give any judgment upon it. A retrospective hiring certainly is not sufficient to confer a settlement; but as the pauper continued in the same service after the expiration of the first year, there was abundant

for the justices to have presumed a hiring for a year from
to. However, as the fact is not stated one way or the
he case must be sent back again to the Sessions, where,
obably, the justices, after hearing the intimation of this
vill find the fact of a hiring for a year, which will put an
he case.—THE COURT accordingly ordered the case to
back to the Sessions.

Rex v. *Nuneham Courtney*, *E. T.* 41 *G.* 3. 1 *East*, 373.—
tices, by an order made on the 4th of *June* 1799, removed
E. his wife from *B.* to *N. C.* The Sessions on appeal con-
he order, and stated specially for the opinion of this Court,
pauper, *F. J.*, was about 19 years old, and was married
id *E.* in the year 1799, before the date of the said order;
between the notice of appeal against the order and the
t Sessions the pauper absconded, leaving his wife, and
since been heard of. And that the officers of *B.* have
due diligence to find him, in order to have him examined
ness at the hearing of the appeal, but without success.
e pauper was employed in the service of *W. C.*, in *N. C.*,
to drive his team during the period of 11 months, between
mas 1794 and *Michaelmas* 1795; and in order to prove
pauper was legally settled in *N. C.*, the respondent parish
fered in evidence an examination in writing of the pauper,
amination was first taken upon the oath of the pauper on
of *June* 1799 by one magistrate, upon the complaint of
rchwardens and overseers of the poor of *B.*, and which ex-
n was on the day of the date of the said order read over
auper by the same and another magistrate, before whom
per was then taken by the churchwardens and overseers of
rder to be removed to the place of his settlement; and to
h of the contents of which examination the pauper then
th before the justices, who thereupon made the said order.
ppeared, that no person belonging to *N. C.* was present
of the before-mentioned times; whereupon the appellants
to the admissibility of this examination in evidence. But
t of Quarter Sessions overruled the objection, and received
mination in evidence; by which it appeared that the
after stating the place of his birth, which was in *S.*, de-
hat he hired himself at *A.* fair, some days before *Michael-*
, as a servant to the said *W. C.*, farmer in *N. C.*, for a
lodge in his house, and to be paid 3*s.* 6*d.* *per* week for
half of that year, and 4*s.* *per* week for the second part,
e found in victuals for five weeks in the harvest; and that
d that year, and received his wages accordingly. He
ed several other hirings and services to persons in other
; none of which was for a year, and concluded by saying
lone no other act to gain a settlement. And the Court
this examination to be sufficient proof of the pauper's
nt in *N. C.*, did for that reason confirm the order. This
t came on to be argued in last term, when the Court, with-
ation, expressed a decided opinion against the admissibility
ridence. But it stood over by desire of the respondents'

And now ERSKINE for the respondents, in answer to a
put to him by the Court, admitted that he had no argu-
adduce by which he could expect to alter the opinion

An *ex parte* examination, in writing, of a pauper, taken on oath before two magistrates, for the purpose of removing him to the place of his settlement, is not admissible in evidence upon an appeal against an order of removal, on the ground of the pauper's having absconded between the notice of appeal and the trial of it before the Quarter Sessions, although the respondents had used due diligence, but without effect, to procure the attendance of the pauper as a witness, he not having been heard of from the time of his absconding.

which the Court had before intimated. — PER CURIAM: Both orders quashed. (*a*)

Neither the hearsay of a pauper who is dead, nor his *ex parte* examination, in writing, taken, on oath, before two magistrates, touching his settlement, are admissible evidence of such settlement.

487. *Rex* v. *Ferry Frystone, M. T.* 44 *G.* 3. 2 *East*, 54. — Two justices, by an order, removed *C. H.*, the wife of *J. Hill*, deceased, and her four children by name, from the township of *L.* to the township of *F. F.* — The Sessions, on appeal, confirmed the order, subject to the opinion of this Court on a case, stating, that upon hearing of the appeal the respondents, in support of the order of removal, produced the pauper, *C. H.*, as a witness; who deposed, "that she was the widow of *J. Hill*, and that she had "heard the said *J. Hill* in his life-time say, that his settlement "was at *F.*, which he said he gained by hiring with and serving "one *J. Hawkshead*, a bricklayer in *F.*, for a year." The respondents then gave in evidence the examination, of which the following is a copy: "East riding of the county of *Y.* — The "examination of *J. Hill*, late in the royal artillery, now residing "at *K.* in the said riding, taken upon oath this 15th day of *April* "1788; who saith, that his legal settlement is at *F.*; that he "acquired the same by servitude, namely, by being hired for one "whole year, and served the said year with *J. H.* bricklayer of "*F.*; and that he hath not gained any legal settlement elsewhere "since, to the best of his knowledge and belief." (Signed and attested.) No proceedings were had in consequence of this examination until the order of removal, which is the subject of this appeal, was applied for and made. The respondents did not offer any other evidence than what is above stated in support of the order of removal: upon which the counsel for the appellants objected both to the admissibility of the testimony of the said *C. H.* so given by her as aforesaid, and also of the said examination in evidence. The Sessions, however, thinking the evidence above stated to be sufficient proof of the pauper's settlement in *F.*, confirmed the order, subject to the opinion of this Court. It was afterwards certified, that *F. F.* and *F.* are one and the same township. — TOPPING and HEYWOOD, in support of the order of Sessions (after an ineffectual application to have the case sent down to be re-heard by the Sessions), said, that they could not add any thing to the argument of Mr. Justice *Buller* in the case of *Rex* v. *Eriswell* (*b*), in support of the admissibility of the evidence. — CHRISTIAN *contrà*, was stopped by the Court. — LORD KENYON C. J. The point upon which the Court were divided in opinion, in the case of *Rex* v. *Eriswell*, has been since considered to be so clear against the admissibility of the evidence, either as to the hearsay of the pauper or his examination in writing, that it was abandoned by the counsel at the bar in the case of *Rex* v. *Nuneham Courtney* (*c*) without argument. It is true there was no evidence there that the pauper, whose examination had been admitted in evidence, was dead: but our opinion against the general doctrine laid down by the two judges who supported the reception of the evidence in the former case was pretty broadly hinted. And to be sure that point ma-

(*b*) *Post*, pl. 828.

(*c*) *Ante*, pl. 486.

(*a*) In the case of Rex *v.* The Inhabitants of Eriswell, *post*, pl. 828. where the Court were equally divided upon the admissibility in evidence of such an *ex parte* examination, the affirmative opinion was grounded on presumption that the pauper was dea or, what was admitted to be equivale was insane.

now be considered to be at rest. — PER CURIAM: Both orders quashed. (*a*)

488. *Rex* v. *Abergwilly*, *M. T.* 44 *G.* 3. 2 *East*, 63. — Two justices by an order removed *A.*, the widow of *B. J.*, deceased, and her children by name, from the borough of *N.* to the parish of *A.* The Sessions, on appeal, confirmed the order, subject to the opinion of this Court on a case setting forth, in the first place, the examination of *A. J.*, taken before two magistrates, upon which the order of removal was founded; in which examination it was stated "that her husband informed her after their marriage, that "*his* last legal settlement was then in the parish of *A.*, by hiring "and service by the year to one *J. H.* there." (which was the only matter touching the settlement in *A.*) The case then stated, that upon the trial of the appeal, the pauper, *A. J.*, upon her examination in court, denied having ever heard her husband say where he was a parishioner; upon which the Court resorted to a written examination of the husband's taken before two magistrates, soon after his marriage, but which, in the opinion of the Court, was never acted upon in any manner until the hearing of the appeal. In that examination (which was set forth *verbatim* in the case) the husband swore to a settlement in *A.*, by hiring for a year, and service there for a much longer period with *J. H.*; and that he had done no other act to gain a settlement elsewhere. It was contended on the part of the appellants, that the Court ought not to have resorted to the examination either of the husband, who was dead, or of the pauper herself. — ABBOTT, who was to have argued in support of the order of Sessions, admitted that it could not be supported after the recent determination of the Court (*a*) against the admissibility of that species of evidence upon which the Court had formerly been divided in opinion in the case of *Rex* v. *Eriswell* (*b*): and against the reception of which evidence the present judges of the Court had intimated a strong opinion in *Rex* v. *Nuneham Courtney* (*c*). — THE COURT assenting, the rule was made absolute for quashing both orders.

An *ex parte* examination, in writing, of a pauper touching his settlement cannot be received in evidence of such settlement, though he be dead.

(*a*) *Ante*, pl. 485.

(*b*) *Post*, pl. 828.

(*c*) *Ante*, pl. 486.

(*a*) *Vide* Rex *v.* Chadderton, *post*, pl. 830., and Rex *v.* Abergwilly, *infra*.

CHAPTER VII.

SETTLEMENT BY APPRENTICESHIP.

I. *The Statutes.*
II. *Of the Binding necessary to gain a Settlement.*
III. *Of the Time and Place of Service.*
IV. *Of discharging the Indentures.*
V. *Of binding to one Master and Service with another.*
VI. *Of Apprenticeships under Certificates.*
VII. *Evidence of Apprenticeship.*

I. *Statutes.*

3 *W.* & *M. c.* 11. § 8. — 31 *G.* 2. *c.* 11.

II. *Of the Binding necessary to gain a Settlement.*

Any person bound as apprentice to a master who cannot take one, shall thereby gain a settlement. S. C. Vin. Ab. 29.

489. *ANONYMOUS, T. T.* 9 *Ann. MSS.* — If an apprentice be *bound* to a master who has no right to take an apprentice, yet a settlement will be gained under such an indenture, by service. (*a*)

An apprentice who binds himself, during infancy, thereby gains a settlement. S. C. And. 373. Sett. & Rem. 77.

490. *Newberry* v. *St. Mary's, H. T.* 3 *G.* 2. *Foley*, 154. — A poor boy of 14 years of age bound himself apprentice for seven years to a weaver. — Mr. TYRRELL argued, that as this was not a binding according to the statute, the indenture was void, because an infant could not bind himself; and, therefore, the pauper could not gain a settlement under it — But PER TOTAM CURIAM, It did not gain him a settlement; for an infant may make an indenture for his own benefit.

The indentures must be legally stamped to entitle the apprentice to settlement under them. S. C. 2 Bar. K. B. 39.

491. *Salford* v. *Storeford, M. T.* 5 *G.* 2. *MSS.* — *L.*, while he was under the age of 21, was bound by indenture an apprentice to *G.*, in the parish of *S.*; the indentures were never *stamped*, but the apprentice served his time out under them in the parish of *S.* The Sessions conceived this to be a good settlement by way of service. — But THE COURT OF KING'S BENCH, on the authority of the case of *Cuerden* v. *Leyland* (*b*), quashed the order, for that servitude under indentures of apprenticeship which are not stamped can never gain a settlement.

The binding need not be by *indenture* for the purpose of gaining *a settlement.*

492. *Rex* v. *Mellingham, T. T.* 5 & 6 *G.* 2. 1 *Sess. Cas.* 417. — One *B.* was bound an apprentice by a deed in the form and manner of an indenture, but it was not actually indented. The justices at Sessions, on the foot of that binding, adjudged it to gain a settlement. The order of Sessions was afterwards quashed by THE COURT OF KING'S BENCH, because a binding without indenture was not good. (*c*) But now, by 31 *G.* 2. *c.* 11., no set-

(*a*) See the case of Rex *v.* St. Petrox, Dartmouth, *post*, pl. 504.

(*b*) *Ante*, vol. i. pl. 643.

(*c*) See the same point adjudged in the cases of Rex *v.* Stratton, Burr. S. C. 272. and Rex *v.* Mawman, Burr. 290.

dement shall be avoided by reason of the deed not being indented only.

493. *St. Nicholas*, v. *St. Peter's*, *M. T.* 10 *G.* 2. *Barr. S. C.* 91. — *B.*, being under 16 years of age and unmarried, was bound apprentice to *J. B.* of *St. P.*, in *I.*, by indenture, and with the consent of his father, for the term of four years only; and he dwelt with and served his master in *St. P.* only the four years. The Sessions were of opinion, that the pauper did not gain a settlement in *St. P.*, because he was not bound for seven years according to the *5 Eliz. c.* 4. — LORD HARDWICKE C. J. The question is, "Whether an apprentice bound for less than seven 'years can gain a settlement?" I am of opinion, that he may gain a settlement under such a binding. The words of *5 Eliz. c.* 4. § 26. are very strong, "That every person, &c. shall and 'may have and retain the son of any freeman, &c. to serve 'and be bound as an apprentice after the custom of the city of '*London*, for *seven years at the least*." Between this 26th section and the 41st, there are a great many regulations concerning the persons who are to take an apprentice, and who are to be bound apprentices. Then comes section 41st, which says, "That all 'indentures of apprentice, otherwise made or taken *than is by this* '*statute limited, ordained, and appointed, shall be clearly void in* '*the law to all intents and purposes*." The question, therefore, arises upon this 41st section taken together with the 26th. And it is to be inquired — 1st, Whether the 41st section has a relation to, and runs over all, the several clauses of the act, so as to reach the 26th section. 2dly, If it do, then whether it makes such an indenture void, or whether it makes it voidable only. First, I do not see but that it does run over the several clauses of the act, so as to reach the 26th clause. Secondly, I am of opinion that it does not make this indenture void; but only voidable, if the parties themselves think fit to take advantage of it. There are many cases where, though according to the strict words a thing is made void, yet such thing is held not to be absolutely void, but only voidable. One instance of this is the statute of *Westm.* 2. *c.* 1. relating to fines levied by tenant in tail. The act says, that the fine shall be "*ipso jure nullus*," as strong an expression as can be thought of: and yet it has been held that it shall not be absolutely void against the issue in tail; but only work a discontinuance, and put him to his *formedon*, if he think fit to take advantage of it. In *Hob.* 166. in the case of *Winchcomb* v. *Bishop of Winchester*, several cases of this kind are collected; one of which is very material, *viz.* That a sheriff's bond against the statute of *23 Hen.* 6. is made utterly void; and yet "*Non est factum*" cannot be pleaded to it. That is the case of a bond; this, of an indenture. Here is an indenture between the master and his apprentice to serve for four years; and the apprentice has actually served four years: it has had its effect between the parties; neither of them has thought fit to take advantage of any defect in it. The parish has had the benefit of this apprentice's service, as far as the service of an apprentice is a benefit to a parish, and yet the parishioners would make it void: this would, I think, be extremely hard. I will mention a case which was not mentioned at the bar; it is in 1 *Salk.* 98. *Barber* v. *Dennis* (*a*); but more fully stated in 6 *Mod.* 69. The widow of a waterman,

A binding for less than *seven years* is only *voidable*, and not *void*.

(*a*) *Ante*, vol. i. pl. 626.

who, as was said, by the usage of *Waterman's Hall*, may take an apprentice, had her apprentice taken from her, and put on board a Queen's ship, where he earned two tickets, which came to the defendant's hands, and for which the mistress brought trover. It was agreed the action would well lie if the apprentice were a legal apprentice; for his possession would be that of his master, and whatever he earned shall go to his master. But it was objected, that this supposed apprentice was no legal apprentice if the indentures be not enrolled pursuant to the act of 5 *Eliz.*; and if he were not a legal apprentice, the plaintiff had no title. But LORD CHIEF JUSTICE HOLT said, he would understand him an apprentice, or servant *de facto*, and that would suffice against them being wrong-doers. In the report in *Salkeld*, the word "servant" is not mentioned. And, indeed, an action could not have been brought for a servant's wages, either on board or elsewhere: for a master cannot bring an action for the wages of his servant; though for the wages of an apprentice he may, because the time of an apprentice is considered as the time of the master; and what is earned by the apprentice is considered as belonging to the master. Now, if the construction of this act had been so very strict as is contended for, such a construction would have avoided the apprenticeship to the effect then in question; and the mistress could never have maintained that action. Therefore, I am of opinion, that this indenture is not void, so as to be liable to be taken advantage of by a third person; but voidable only, at the election of the parties, if they think fit to take advantage of it. And it would be extremely hard that all these indentures should be absolutely void for want of any single qualification required by this act. If the time of service was the only circumstance, liable to this objection, I should not think it of so much consequence; for, I believe, there are not many bindings for a less term than seven years; but there are a vast many other qualifications that are mentioned in the 5 *Eliz.*, which are all liable to the same objection; and if a binding for seven years be necessary, it follows, that if any one of these qualifications are wanting, the indenture will be in the very same case as if this circumstance of time was wanting; and if so, I question whether any one settlement under an indenture of apprenticeship has been gained for 50 years past. Therefore, upon this argument, I am of opinion that the settlement is good, though the binding was only for four years. But then there comes the statute of 3 & 4 *W.* & *M.* c. 11. § 8. which enacts, "That if any person shall be bound an "apprentice by indenture, and inhabit in any town or parish "such binding and inhabitation shall be adjudged a good settle"ment, though notice in writing be delivered and published:" from whence it is inferred, that if there be no binding by 5 *Eliz.* then there is no settlement by 3 & 4 *W.* & *M.* But this act of King *William* and Queen *Mary* takes it up as he finds it; and only intends that an apprentice should not be obliged to give notice in writing. The construction of both statutes must be the same. And though the notion of settlements of poor persons had not obtained at the time when the act of 5 *Eliz.* was made, as it has done since, yet it was a mistake of one of the counsel to say that the 33 *Eliz.* was the first act relating to the settlement of poor persons; for 27 *Hen.* 8. *c.* 25., which is printed in *Rastal's*

edition of the Statutes at Large, establishes a settlement for such as had been born or dwelt three years in any parish: there was a subsequent statute 1 *Edw.* 6. *c.* 3. But, indeed, the present notions of settlements have taken their rise from 13 & 14 *Car.* 2. *c.* 12. The principal objection to this binding for four years only was founded upon the case of *Cuerden* v. *Leland* (*a*), where the indenture was holden to be absolutely void for want of being stamped: and how to distinguish that case from this is the difficulty. If there had been no other words in the 8 *Ann. c.* 9. than there are in this, the difficulty had been great enough. But that case materially differs from the present; for, in that case, there were not only the words "that all indentures, whereupon the duty was "unpaid, and all unstamped indentures, should be void;" but the act of parliament went on further, and added these words, "and "not available in any court or place, or to any purpose what-"soever." And there is a subsequent clause which further enacts, "that no indenture required by that act to be stamped, "shall be given or admitted in evidence in any suit to be brought "by any of the parties thereunto, unless such party on whose "behalf it shall be given or admitted in evidence do first make "oath that the whole sum really given with the apprentice, or "contracted for, was truly inserted." So that in that case it was superadded; 1st, that such indenture should not be available in any court or place; 2dly, that it should not be given or admitted in evidence, and yet the order made in that case was grounded upon the indenture which was not stamped, nor was the duty paid. Therefore the justices admitted a matter in evidence which they ought not to have done. And it has been holden, that if the justices admit evidence which they ought not to admit, it is a sufficient reason for quashing their orders. And, therefore, that case of *Cuerden* v. *Leyland* was properly determined; because the justices should not have admitted the evidence upon which they grounded their order. Therefore, I am of opinion, that the present indenture is not absolutely void, but only voidable at most.—THE OTHER THREE JUDGES concurred in opinion, that this indenture was not absolutely void, but only voidable; and that at the election of the parties only, and not by a third person; for, that this indenture could only be avoided by the master or servant, who were the parties to it, but not by the parish, who have had the benefit of the service of this apprentice. They added some instances to prove that where the strict words of statutes seem to make things nullities, yet they must be regularly avoided before they shall be absolutely considered as such; particularly where a previous sentence of excommunication is requisite; though a statute says, "that the person shall be *ipso facto* excommunicate." And they thought it would be inconvenient to admit too rigid a construction of the 41st clause of the 5 *Eliz. c.* 4. which seemed to them to be a law more beneficial to corporations than to the public in general, and which had not been much regarded or favoured. (*a*)

(*a*) See vol. i. pl. 643.

(*a*) See also Rex *v.* St. Petrox, that the indenture of a parish apprentice bound "until she shall have accom-"plished her full age of 21 years," is not *void* for having omitted the alternative directed by 43 Eliz. c. 2. § 5. "or the time of her marriage." *Post*, pl. 504.

A *binding* and *service* will gain a *settlement*, although the apprentice*fee* be not inserted in the indentures; for that only subjects the master to a forfeiture, but doth not vacate the indentures.

S. C. 2 Sess. 196. 2 Str. 1132. Burr. S. C. 145.

494. *Rex* v. *Northowram*, *E. T.* 13 *G.* 2. *MSS.* — The mother of the pauper proposed to put him an apprentice to *A. S.* in *N. S.* refused to take him unless his relations would clothe him, or furnish money for that purpose. The grandfather of the pauper accordingly agreed to pay 30*s.* to the master to clothe the boy withal; and, in pursuance of this agreement, the master laid out the 30*s.* in clothing for the boy. Afterwards an indenture was drawn and executed by the master and the apprentice, and the 30*s.* repaid by the grandfather to the master. The pauper served his time under the indentures. The question was, Whether this 30*s.* be such a sum as ought to be inserted in the indentures by the 8 *Ann. c.* 9. *s.* 39.? — LEE C. J. said, the not inserting in words at length the full sum received, or directly or indirectly given, contracted, or agreed for, subjects the master or mistress to a *forfeiture*, but does not make the indenture void. — The other three Justices concurred, that the pauper, by serving under these indentures, had gained a settlement in *N.*

Settlement may be gained where the apprentice is bound, though the indenture be not executed by the master.

495. *Rex* v. *St. Peter's-on-the-Hill*, *H. T.* 14 *G.* 2. *MSS.* — *J.* was legally settled at *St. M.*, by a hiring and service, and afterwards was bound an apprentice in *St. P.*, *in C.*, to a carpenter, for seven years; but the indentures were not executed by his master. — LEE C. J. It is objected, that this indenture is not good because not executed by the master, but that makes no difference if the apprentice himself was bound (*a*.)

A binding, though defective in omitting part of the form required by 43 Eliz. c. 2. § 5. and *voidable* between *the parties*, yet not avoided, shall be good for the purpose of gaining a settlement.

(*b*) The case of St. Nicholas *v.* St. Peter's, *ante*, pl. 493.

496. *Rex* v. *St. Petrox*, *T. T.* 19 *G.* 2. *Burr. S. C.* 248. — The pauper, a poor girl, was bound an apprentice by the parish of *St. Petrox* to *R. G.*, with her to serve, dwell and abide, until she should have accomplished her full age of 21 years. The statute of 43 *Eliz. c.* 2. *s.* 5. enacts, "That it shall be lawful to bind any "such children apprentices till such *woman child* shall come to "the age of 21 years, or the time of her marriage." — THE COURT thought it not void for want of *the alternative* of marriage; though perhaps not obligatory on the parties. In the *Ipswich* case (*b*), the indenture was holden not to be binding betwixt the parties, yet it was holden neither to be void nor voidable by the parish as to the gaining a settlement. But even if there was no authority in the case, yet the indentures ought not to be considered as absolutely void, but only voidable; for it would be extremely hard that a poor child who had served many years under an indenture of apprenticeship should lose the benefit of her settlement, because the justice's clerk who made the indenture happened to be either ignorant or negligent.

An apprenticeship must be by *deed* or *writing*; for a *parol binding* or a verbal agreement to be an apprentice, is not a sufficient

497. *Rex* v. *Whitechurch Canonicorum*, *T. T.* 5 *G.* 3. *Burr. S. C.* 540. — *J. G.*, when he was 22 years of age, agreed with *B.*, a stone-mason, who lived in *W. F.*, that he *B.* should take *G.* apprentice for the term of six years, and teach him his trade of a stone-mason; that he should, during the term of his apprenticeship, provide for him meat, drink, washing, lodging, and clothing; that *G.* should live with and work for him as his ap-

(*a*) See the case of Rex *v.* Fleet, *post*, pl. 500. that an apprentice legally bound shall not be prevented from gaining a settlement on account of the master's not having signed the counterpart pursuant to the direction of the 8 & 9 W. 3. c. 30. and the case of Rex *v.* St. Nicholas in Nottingham, *post*, pl. 502., that a parish apprentice shall gain a settlement, although he did not execute the indenture by which he was bound.

prentice in his said trade during that term; and that indentures should be executed between them accordingly: but no indentures were ever executed. *G.*, immediately after the agreement was made, went to live with *B.*, and worked for him as an apprentice in his trade for five years and upwards, in *W. F.*, and was also sometimes employed by *B.* in husbandry-business; of which *G.* complained as contrary to the agreement by which he was to work for *B.* in the trade of a stone-mason. *G.*, before the expiration of the last year of the term, married, and left his master with his master's consent. There never was any other contract or agreement between him and *B.* No wages were ever paid by *B.* to *G*; but a little pocket-money was sometimes given to him by *B.* They considered themselves as master and apprentice; but as no indenture was ever executed between them, they thought that they were at liberty to part when they pleased. When *G.* complained to *B.*, that he ought not to be employed except in his business of a stone-mason, *B.* told him, that he might go away if he pleased. — Mr. THURLOW contended, that the pauper was neither *bound* as an apprentice, nor *hired* as a servant; that he could not be an apprentice because there was no indenture executed; that he could not be a servant because there was no hiring either express or implied; and that the objects being different, the binding as an apprentice and the hiring as a servant could not be converted one into the other. — THE COURT mentioned the case of *Rex* v. *St. M. K.* as in point, and held that *G.* gained no settlement under this agreement.

binding to gain a settlement. See Rex v. Stratton, Burr. S. C. 272. to the like effect.

See Rex v. St. Mary Kallander, *post*, pl. 540.

498. *Rex* v. *St. Matthew's Bethnal-Green*, *H. T.* 7 *G.* 3. *Burr. S. C.* 574. — *F.* was brought up at the *charity-school* of *St. J. W.*, and in the year 1747 was bound apprentice by indenture to *R.*, a blacksmith, for seven years; and served his whole time as apprentice under such indenture, with *R.*, in *St. Botolph without Aldgate*; and at the time of his being put apprentice, the sum of *5l.* was inserted in the indenture as paid, and was actually then paid to *R.*, in consideration of his taking *F.* to be his apprentice, out of a voluntary yearly contribution or subscription of divers of the inhabitants of *St. J. W.*, for the purpose of putting out boys and girls apprentices, brought up at the charity-school of *St. J. W.* There are annually elected, by the contributors or subscribers, four trustees to manage the charity, and a treasurer: a number of boys and girls are every year bound out by the trustees as apprentices; and part of the charity-money is advanced with such apprentices by the treasurer. By the order of the trustees *R.* received the *5l.* mentioned in the indenture, from the trustees or treasurer. The indenture was not stamped with any stamp denoting 6*d.* in the pound to have been paid by the master for every 1*l.* of the *5l.* paid to *R.* One question in this case was, Whether it was necessary to the purpose of a settlement, that these indentures should be stamped? It was contended, that this case falls within the proviso and exception in the stamp act of 8 *Ann. c.* 9. *s.* 40. "That nothing in that act "shall be construed to extend to charge any master or mistress "with the payment of any of the said duties, in respect of any "money by him or her received with any apprentice or servant "who shall be put or placed out at the common or public charge "of any parish or township, or by or out of any *public charity*;

An apprentice bound out by a public charity gains a settlement, though the indenture be not stamped.

See Rex v. Ditchingham, *post*, pl. 505.

" or to require the stamping of any indenture, articles, covenant, " or contract relating to such apprentice or servant as last men- " tioned." — THE COURT were clear that this was a *public charity*(*a*), and that it was not necessary to gain a settlement that the indenture should be stamped.

If an agreement be made, that a boy shall be put apprentice, but no indenture executed, he cannot gain a settlement as a *hired servant* by serving as an apprentice under such agreement.

Same point, Rex *v.* Kingsweare, Burr. S. C. 839.

499. *Peter-Church* v. *All Saints, H. T.* 10 *G.* 3. *Burr. S. C.* 656. — *Lewis* was born in the parish of the *Hay*. Afterwards, he and his father entered into an agreement in writing, (not stamped,) with *Mary Tringham*, in the following words, viz. " Be it remem- " bered, that it is agreed between Mrs. *M. T.*, cooper's widow, of " the parish of *A. S.*, in the city of *Hereford*, of the one part; and " *A. L.* the elder and *A. L.* the younger, of the parish of *Dorstone*, " in the county of *H.*, of the other part; in manner as followeth: " Whereas the said *A. L.* the younger, with the consent of *A. L.* " the elder, is to be bound apprentice unto the above-named Mrs. " *M. T.*, for the term of seven years; the said *M. T.* doth " hereby covenant and agree to pay unto the said *A. L.* the " younger the sum of 1*l.* 5*s.* the first year of the seven; and " the four following years, the sum of 2*l.* 10*s.* a year; and the " sixth year to pay him the said *A. L.* the younger the sum of " 3*l.*; and the seventh and last year the sum of 4*l.*; all of good " and lawful *British* money." In the margin of the agreement were written these words, " The boy's time to begin from the " date." *L.*, the pauper, entered into the service of *M. T.*, served her two years, and received the money mentioned in the agreement, for such time; then left his mistress; no indentures of apprenticeship having been executed pursuant to such agreement; and has, since, gained no settlement. — YATES J. An apprenticeship was certainly the thing in view in the present case; but there was no indenture ever executed, nor was the agreement stamped. In the case of a servant there must be a hiring for a year as well as a service. But this pauper was an infant, and therefore could not hire himself, and his father's agreement could not bind his infant son as a servant; though his infancy would be no obstacle to his being bound as an apprentice. Such a construction as has been attempted would evade the stamp act. He could not gain a settlement under the service here stated. — Mr. JUSTICE WILLES was of the same opinion. This could be no contract by way of a hiring for a year. The infant could not contract to hire himself for a year: This case was very like that of *Whitechurch Canonicorum* (*b*), where the pauper was adjudged to have gained no settlement, either as an apprentice, or as a hired servant.

(*b*) *Ante*, pl. 497.

An apprentice legally bound shall not be prevented from gaining a settlement under the indentures, from the master not having signed the counterpart.

500. *Rex* v. *Fleet, T. T.* 17 *G.* 3. *Cald.* 31. — The pauper *Baskett* was when an infant bound out a parish apprentice until she should attain her age of 21 years or day of marriage. The *original indenture* was properly executed by all the parish-officers, and allowed by two justices. The *counterpart* was also allowed by the same justices; but neither the original indenture, nor the counterpart, were executed by the *master*. The master nevertheless accepted the indentures and the pauper, whom he considered as his apprentice till the apprenticeship expired. The question was, Whether, as the master had not signed the counterpart, pursuant to the directions of 8 & 9 *W.* 3. *c.* 30. §. 5. the pauper had gained a settlement by the apprenticeship? — LORD MANSFIELD: There is no doubt. The binding was authorized by 43 *Eliz. c.* 2. § 5.

(*a*) See as to apprentices bound by public charities, vol. i.

long before the act requiring a counterpart. But though the binding was valid if the apprentice was received, it was doubtful till that statute was made, whether the persons to whom such poor children were to be bound, were compellable to receive them. That statute was therefore made; and it subjects the master, upon his refusal to receive the apprentice, to a penalty: but in no other respect confirms the power of binding, which was already fully established. — ASTON J. It has been so settled in the case of *Rex* v. *St. Peter's-on-the-hill.* (*a*)

(*a*) *Ante*, pl. 495.

501. *Rex* v. *Highnam*, *H. T.* 25 *G.* 3. EDITOR's *MSS.* — *Reading*, the pauper, was born at *H.*, the place of his father's settlement. When he was 17 years of age, he went to *Evans* of the parish of *St. Mary de Crespt*, in *Gloucester*, carpenter, for the purpose of being his apprentice for four years, to learn the trade of a carpenter: but to save the expences of indentures and duty, (4*l.* 4*s.* consideration being paid by the pauper to his master), he and his master agreed to sign an agreement on *unstamped paper*, which was accordingly done in the following manner: "Articles "of agreement made and concluded upon this thirteenth *July* "1772, 12 *G.* 3. between *E.*, of the city of *G.*, carpenter, and "*R.*, of *H.* In consideration of the weekly wages, or sums of "money, and covenants hereinafter mentioned; and which, on "the part of the said *E.*, are hereinafter agreed to be paid, done, "and performed; the said *R.* doth covenant, promise, and agree "to and with the said *E.* in manner following, that is to say, "he the said *R.* shall and will faithfully serve the said *E.* in the "business of a carpenter, from the date of these presents to the "full end and term of four years next ensuing, and fully to be "complete and ended. The consideration of this agreement is, that "the said *E.* do pay to *R.* for every week's work he do work, "4*s.* 6*d.* *per* week for the first year; for the second year 5*s.*; for "the third and fourth year 6*s.* *per* week. *E.*, *R.* Signed and "delivered in the presence of us, *I. H.*, *I. K.*, and *A. R.* — "1772, *September* 29. *R.* Dr. to *E.*, the sum of 4*l.* 4*s.*, witness "my hand, *R.*" It appeared by the parol evidence of *R.*, that at the time of signing the above-mentioned agreement, it was further agreed by parole between the pauper and *E.*, that the pauper should find his own diet and lodging, and that he was to be his own master on *Sundays*, and was not to be paid for the time he should play, but was to be paid a proportionable part only of the weekly sums before-mentioned, for the time he should work. The pauper played when he pleased, and was out of his master's service at least a fortnight or three weeks in every year, besides *Sundays*; and at the end of every week his master deducted for the time he had absented himself from work; and he had every *Sunday* to himself. He went to his father's at *H.* every *Saturday* evening, and did not return to his master till *Monday*, or sometimes not till *Tuesday* morning, and he served the four years in the manner before-mentioned. The pauper *R.* was removed with his wife and child from *St. Aldate* in *Gloucester* to *H.*: and the Sessions confirmed the order. — Mr. BEARCROFT. It is expressly stated that an apprenticeship was intended; but to save expence, the parties make an agreement on unstamped paper. An apprenticeship for four years is good, for the purpose of a settlement; but then it must be on stamps, and the duty paid on the consideration.

Where an apprenticeship is *intended*, and the parties, to save the stamp duties, enter into a written agreement, this defective apprenticeship shall not give a settlement by way of hiring and service.

S. C. Cald. 491.

See Rex v. Laindon, *post*, pl. 507.

A binding for seven years not stamped would be void; and although stamped, would be void, if there was any consideration, and the 6*d.* duty not paid; for which they cited *Cuerden* v. *Leyland* (*a*); so that, as a binding or apprenticeship, this paper was doubly void. But secondly, a defective apprenticeship could not give a settlement by hiring and service: besides, this would not by itself have been a sufficient hiring; for he must be a servant for the whole year, and every part of it. * Now he was to be his own master on *Sundays*, and to work or play as he pleased on other days, and the result was, that he was absent for weeks: but the whole was *a fraud* to avoid the stamp and duty. — Mr. WILSON *contrà*, admitted that there could be no settlement by apprenticeship; it must be by service. If it were not for the introductory part of the case, it would be clearly a contract of service for four years. The question then is, Whether the parties intended an apprenticeship? for, if they did, it certainly would not give a settlement by way of service; that was decided in *Rex* v. *Whitechurch Canonicorum*. (*b*) It does not appear in this case, that the master ever intended an apprenticeship: the pauper undoubtedly did at first intend to become an apprentice; but he changed that intention on account of the expence; and then both parties intended a service; and the pauper served accordingly for four years. It is objected, that he was to be his own master on *Sundays;* but that is *parol evidence* against a *written agreement*, and ought not to have been received: but leaving that out of the case, the agreement on the face of it is an express obligation to serve the whole four years. It is like the case of spinning at so much *per* stone. There is nothing fraudulent in this agreement.— LORD MANSFIELD: There is nothing so manifest, even on the face of the written agreement, as that *a fraud* was intended. He meant to be an apprentice; and to defraud the revenue. A *servant* never gives a consideration. — ASHHURST J. He is to serve as *a carpenter;* that is, not as *a servant*. — BULLER J. There was no change of intention; the whole was one transaction. Why else does the master take the 4*l.* 4*s.*? They meant to have the advantage of an apprenticeship without the expence. — Orders confirmed.

(*a*) *Ante*, vol. i. pl. 643.

(*b*) *Ante*, pl. 497.

A parish apprentice, bound to a master residing in a different parish and county, will gain a settlement by residing 40 days under the indenture, although he, the apprentice, did not sign the deed.

502. *Rex* v. *St. Nicholas in Nottingham*, *M. T.* 29 *G.* 3. 2 *T. R.* 726. — *H.*, a poor boy, settled in *St. N.* in *Nottingham*, which is a county of itself, was, by the overseers of *St. N.*, bound apprentice to *B.*, of *Basford*, in the county of *N.*, frame-work-knitter, until 21 years of age. This indenture was under the hands and seals of the churchwardens and overseers of *St. N.*, and allowed by justices of the peace of the town and county of the town of *Nottingham*, and signed by *B.* the master, *but not executed by the pauper;* under which indenture the pauper served his master in *Basford* five months, when he was discharged under the 20 *G.* 2. *c.* 29. by two justices of the county of *Nottingham* from his apprenticeship, on account of ill-treatment by the master. The boy then became a charge to *Basford*, and was removed to *St. N.*, as the place of his legal settlement. — LORD KENYON C. J. This case is of very great importance; because many poor people are bound apprentices into manufacturing counties from counties where no manufactories are established. It seems to me that the case of *St. Margaret, Lincoln* (*c*) has decided this; because, on

(*c*) *Ante*, vol. i. pl. 718.

that case, no doubt can be entertained but that the inden-
e there executed by the churchwardens and overseers
r no question could have arisen as to the legality of the
if the apprentice himself had executed the indenture.
rere to be determined on the words of the statute 43 *Eliz.*
ney are extensive enough to warrant such a binding as the
; they are to bind apprentices " *where the justices shall see*
ient ;" and whether in or out of the parish is not specified;
; not to be limited by any other rule than the propriety of
sure itself. But the great difficulty arose in my mind on
statute, namely, the 8 & 9 *Will.* 3. *c.* 30. § 5. That statute,
citing that doubts had arisen, whether persons to whom
prentices were to be bound were compellable to receive
eclares, that they shall be compellable to receive them,
ertain penalties. Now, if this act of parliament be com-
ite with that of the 43 of *Eliz.*, and the one cannot be
d beyond the other, it is a powerful restriction of the
statute; for persons residing in one parish cannot be
d for not receiving apprentices bound from any other
But I have solved that difficulty in this way: if the
lo not reject the binding, but assent to it, then there is
currence of all the parties necessary to give validity to the
re: and if no objection be made to the binding before the
ice has resided 40 days under it, he thereby gains a
nt. However, it is the wisest way to abide by former
a, and that of *Rex* v. *St. Margaret, Lincoln*, has determined
int (*a*); and that decision should be the more readily
, because a contrary rule would be attended with infinite
nience to the public. The legislature seeing that there
any poor persons who had not the benefit of a parental
n, and judging very wisely and humanely that somebody
take care of them, directed, by the 43 *Eliz.*, that they
e under the management of the churchwardens and over-
the poor, who were supposed to have the best opportunity
ing the situation of the poor children, and required the
nce of the justices of the peace as a check on the conduct
hurchwardens and overseers. So that it seems the legis-
lid all that human wisdom could do, by directing the
ites, with the churchwardens and overseers, to do that for
r children which their parents could not do for them. —
RST J. However doubtful it may be, whether, under the
the churchwardens and overseers, by the consent of the
, have not a compulsory power of binding out of the parish,
he provision of the act, which says, they shall bind " where
hall see convenient ;" at all events there can be no doubt
; they have the power of making such a binding with the
of all the parties. Now here the master consented by
g the pauper, and the assent of the pauper may likewise
red from the whole of this case. It is not stated nega-
at he dissented; he did not object to the binding, but
der the indenture five months; that implies his consent;
as only on the subsequent ill-treatment of his master that
lied for a discharge: now that very application is an
ledgment on his part that the indenture was binding. The

(*a*) See a manuscript report of this case, vol. i. pl. 713.

pauper then having served more than 40 days under the indenture ought to have the benefit of the service. If any objection could be supported against this binding on account of the pauper's being bound out of the county, it would be productive of great inconvenience; for many children, living in parishes where there is no manufactory, would thereby be deprived of an opportunity of being instructed in beneficial trades, and be confined to the stations of day-labourers. The case of *St. Margaret, Lincoln*, governs this. — GROSE J. I consider that all the parties in this case consented to the binding. If the apprentice had dissented from it, he might have appealed, so might the parish into which the pauper was bound; and by not having appealed, they must be taken to have consented. Then this case falls within the determination of *St. Margaret, Lincoln*. And it would be productive of great confusion and inconvenience, if that decision should be departed from in a case like the present, and in which so many persons are concerned. I therefore consider myself as bound by that determination.

A parish apprentice cannot gain a settlement under indentures to which the two justices have assented *separately*; for they are, for this defect, absolutely *void*.

503. *Rex* v. *Hamstall Redware*, *T. T.* 29 *G.* 3. 3 *T. R.* 380. — The pauper *Cradock*, being settled at *R.*, was bound by indentures by the parish-officers of *R.*, as a parish-apprentice to *Cotton* of the same place, who assigned her by deed to *W.* of *H.*, with whom she resided there under the indenture for more than 40 days, and till the time of his death, when she was removed by order of two justices from *H.* to *R.* The indenture was *separately assented to by two justices of the peace by signing the same; but the two justices did not assent to or sign the same at the same time, or in the presence of each other.* — LORD KENYON C. J. Perhaps the rule, requiring the concurrence of two magistrates at the same time, may be sometimes attended with inconvenience. But the rule has been long settled to be that the concurrence of justices together is not necessary where the act to be done is merely *ministerial*; but they must confer together and form a joint opinion, where the act is of a *judicial* nature. It has been held (whether rightly so or not we are not now to enquire) that the allowance of a poor rate is an act merely *ministerial*; and, that being once established, the consequence results that the two magistrates need not meet when they allow the rate. The words, indeed, of the section on which this question arises are nearly similar to those used in the first, under which the poor rate is to be allowed; but when the nature of this case is considered, it appears to be one of the most serious subjects that fall within the decisions of the justices. For they are empowered by this act of parliament to take children out of the arms of their parents, and to bind them out as apprentices till they are 21 years of age. The law has made them the guardians for those children, who have no others to take care of them. And who ought to judge of the fitness of the persons, to whom the poor children are thus to be apprenticed? Not the overseers — they are frequently obscure people, and, perhaps, in managing the business of the parish are not always attentive to the feelings of parents. But the legislature intended that the magistrates should have a check and control over the parish-officers in this instance; and in my mind they are called upon to examine with the most minute an

anxious attention the situations of the masters, to whom the apprentices are to be bound, and to exercise their judgment solemnly and soberly before they allow or disallow the act of the parish-officers; for which purpose it is necessary that they should confer together. — ASHHURST J. The act of the justices in this case is in its nature an act of judgment. They are the guardians of the morals of the people, and ought to take care that the apprentices are not placed with masters who may corrupt their morals. The justices, therefore, should enquire particularly whether or not they ought to allow the binding by the parish-officers; and I think they would be guilty of a breach of duty, if they implicitly gave their assent without examining into the circumstances of the case. — BULLER J. It is not easily to be reconciled with any principle of common sense to say that an act, which is merely *ministerial, must be done with the consent of two justices.* And I much doubt whether the persons who brought in the act, 43 *Eliz. c.* 2., requiring the consent of two magistrates to the allowance of a poor-rate, intended that the act of allowing it should be only ministerial; for it seems absurd to require the assent of two justices, and yet not to give them the power of withholding it, if they see occasion. But the legislature has not given them any authority to exercise their judgment upon that subject; and, therefore, this Court has said, on the construction of that statute, that their allowance of the rate is merely ministerial. But the act of assenting to the binding of parish-apprentices is purely *judicial*; for, on appeal, the justices at the Sessions are not only to consider the propriety of binding out the apprentice, but also whether the master be bound to take him. — GROSE J. This act is peculiarly of a judicial nature; for the magistrates are appointed the guardians of those who have no other guardians. They should, therefore, exercise their judgment in this case with great deliberation.

504. *Rex* v. *St. Petrox, Dartmouth, H. T.* 31 *G.* 3. 4 *T. R.* 196. — *Hambling*, the father of the pauper's husband, having been told by the parish-officers of *T.* that they would give him 20*s.* to bind his son out an apprentice, if he would find a place for him, did agree with *Hayne*, widow, who occupied a farm in *S.*, to bind his son, then aged about *eight years*, an apprentice to *R. H.*, son of *M. H.* who was then between the age of 14 and 15, and was then resident in his mother's house as a part of her family, and had no habitation or business of his own. It appeared by the indenture that the son, of his own free will, and with the consent of his father, voluntarily bound himself apprentice to *R. H.* of *S.*, till he should attain the age of 21, to learn the art of husbandry; and he the apprentice lived in *H.*'s house in *S.* till he was 20 years old. And it was admitted by the bar, and agreed by the Court, that this indenture of apprenticeship was not absolutely void, on account of the infancy of the parties, and that unless there was some other objection, the pauper gained a settlement by virtue of the apprenticeship.

An apprentice bound to an infant of 14 years of age, gains a settlement by serving 40 days under the indenture, notwithstanding the infancy of the master.

505. *Rex* v. *Ditchingham, T. T.* 32 *G.* 3. 4 *T. R.* 769. — *Cook*, at eight years of age, was placed out by the parish-officers of *B.*, at a general parish meeting, to *Fisher*, a farmer in *B.*, under the following agreement, which was written on a leaf of the parish-book, together with several other agreements of the same sort,

No settlement is gained by serving under an agreement of apprenticeship, not stamped.

namely, "*August* 7th, 1774.— At a general parish-meeting, held "at the parish of *B.* this day, it is agreed that *F.* shall take *C.*, "and maintain her after the manner of an apprentice, with "washing, lodging, clothing, &c. from this day until *Michaelmas* "1780; *F.* to have 20*l.* with her, and, at the expiration of the said "time, to double clothe her; witness my hand, *F.*"— This agreement was not stamped. In pursuance of that agreement the pauper went to live with *F.* at *B.*, and served him one year. *F.* then took a farm at *D.*, to which he removed, and carried the pauper with him; where the pauper lived one year and a half, during which time he found her necessary clothing, lodging, washing, &c. At the expiration of the year and a half, the father, at *F.*'s desire, took the pauper home with him to *B.*, where she continued till this removal; and she did no subsequent act to gain a settlement. *F.* never paid the pauper any money as wages, but, upon her quitting his service, gave her a double suit of clothes according to his agreement.— THE COURT thought the point too clear to be discussed. They said, that though a modern act of parliament had dispensed with the necessity of having the deed of apprenticeship indented, it was still necessary that the binding should be by deed: and that the service as an apprentice could not be converted into a service as a hired servant.

If A serve seven years as an apprentice, and there be no indenture, he cannot gain a settlement, either as an apprentice, or a yearly servant.

506. *Rex* v. *Margram*, *H. T.* 33 *G.* 3. 5 *T. R.* 153.— *W.*, the pauper, was born in the parish of *N.*, in the county of *G.*, and had gained no settlement any where; but his father told him that his mother had made an agreement with *T.*, agent for the *English* Copper Company, who lived in the parish of *M.*, in the county of *G.*, for him *to serve seven years as an apprentice;* and he served in the said copper works for the space of eight years, and there learned the trade of a refiner, and received weekly wages, as also 20*s.* by the year as a refiner; and he conceived himself to be serving *T.* as an apprentice, but *W.* signed no indenture or agreement whatsoever; neither was there any indenture or agreement signed by any other person on his behalf, to his knowledge.— THE COURT, without hearing any argument, were clearly of opinion that this servitude as an apprentice could not be converted into a service under any hiring; and that the pauper had gained no settlement in *M.*

A defective contract of apprenticeship cannot be converted into a contract of hiring and service so as to give the apprentice a settlement as a yearly servant by serving under it. Whether a contract be a contract of apprenticeship, or of hiring and service, must depend on the intention of the

507. *Rex* v. *Laindon*, *M. T.* 40 *G.* 3. 8 *T. R.* 379.— The pauper, being legally settled at *L.*, went into the parish of *I.* in *November* 1792, and after being one month upon trial with *M.*, a carpenter in *E. H.*, he entered into the following unstamped written agreement, witnessed and subscribed as under: "*No*-"*vember* 20th 1792. I *M.* do hereby agree with *C. to serve me* "three years *to learn the business of a carpenter;* the first year "to have 1*s.* 2*d. per* day; the second year to have 1*s.* 6*d. per* "day; the third year 1*s.* 10*d. per* day; witness my hand; *C.*, *M.*; "witness, *B.*" The pauper proved, that at the time of signing the above agreement, he agreed to give *M.* the sum of 3*l.* 3*s.* as a premium to teach him the said trade, and paid *M.* 1*l.* 15*s.*, which, with 1*l.* 8*s.* due for wages during the month of trial, made the 3*l.* 3*s.*; *and that he was not to be and was not employed in any other work than that of a carpenter.* The pauper worked with and served *M.* under this agreement the whole three years, and slept the last 40 nights in the parish of *E. H.*, and considered himself as

an apprentice under the said agreement; but he thought himself at liberty to leave his master if he used him ill. The counsel for the appellants objected to the parol evidence, explanatory of the above-written agreement, being received, which objection was over-ruled by the Court.—LORD KENYON C. J. The two justices who made this order of removal, and the justices at the Sessions who confirmed it, were of opinion that the pauper was not hired to serve *M.* as a yearly servant, but that the relation which was created between them was that of master and apprentice. The opinions of the magistrates ought not, indeed, decidedly to influence our judgment, as they have referred the case to us: but when a certain opinion has gone abroad, founded on the decisions of this Court, upon which magistrates have been acting, it ought not lightly to be departed from. The first question that arises in this case is on the admissibility of the parol evidence. This parol evidence was not offered to contradict the written agreement, but to ascertain an independent fact; and, I think, it was properly received in evidence. That being so, the case appears to be shortly this; in consideration of 3*l.* 3*s.* paid by the pauper, the master undertook to teach him the business of a carpenter, and the pauper was to serve three years. I am sorry that nice distinctions were ever taken in the determination of cases on this subject: but notwithstanding those little differences, we must consider the whole class of decisions on this point, and extract the principle from them. It is admitted in all of them, that if two persons intend to enter into the relation of master and apprentice, and, owing to some circumstance, the relation of apprenticeship is not duly constituted, as, if the indentures be not stamped, this shall not change the condition of the parties; if they cannot avail themselves of the consequences of the condition in which they intended to stand, they shall not be put into another condition in which they did not mean to place themselves. But when it is urged that this relation can only be formed by using the term "apprentice," it may be observed that the argument would lead to an absurd consequence; for then, if the word "clerk" were used in regular indentures of apprenticeship, the clerk could not gain a settlement by serving under the indenture, merely because he was not retained *eo nomine as an apprentice:* but it would be a disgrace to our laws if we were obliged to decide according to words without considering their meaning. It was very properly said by Lord *Hardwicke* that there is no magic in words: and he said this, not as a discovery just then made by him, but as a maxim that was handed down to him from his predecessors. If the relation of master and servant be created by the contract of the parties, though they do not use the very words "master and apprentice," yet if they use words tantamount, it is sufficient. In this case a premium was paid by one man to another, who engaged to teach him a trade: now, what is that but an apprenticeship? The term "apprentice" is taken from the *French* word "*apprendre*" to learn. Unfortunately Lord *Mansfield* did not adhere to his first opinion in *Rex* v. *Little Bolton* (*a*): but even when he gave his second opinion in that case, he took it for granted that the rule remained unshaken, that if the parties intended to create the relation of master and apprentice, and it were not legally created, so that the apprentice could not gain a settlement as such, he could not acquire a settlement as a yearly

parties, which is to be collected from the whole of their agreement. A contract of apprenticeship may be formed without using the term "apprentice." Parol evidence may be received to explain a written instrument.

(*a*) *Ante*, pl. 316.

servant. And in the subsequent case, *Rex* v. *Highnam* (*a*), Lord *Mansfield* adopted the opinion he had first given in *Rex* v. *Little Bolton*, conformably to all the other cases. Therefore, we may rely on this last case; and if it be not distinguishable from that of *Rex* v. *Little Bolton*, it is sufficient to say that it is subsequent to it; and that the case of *Rex* v. *Little Bolton* is an anomalous case. When we find the current of authorities one way, I should be sorry that a little inadvertence in the Court in the decision of one case only should be supposed to break in upon the general rule; for the case of *Rex* v. *Coltishall* (*b*), which has been cited, is distinguishable from this class of cases; there, by the agreement of the parties the pauper "was to do any work that the master set him about. (*c*)" I am, therefore, most clearly of opinion that in this case the parties intended to form the relation of master and apprentice, and that as that relation was not legally constituted so as to give the latter a settlement as an apprentice, the relation cannot be converted into that of master and servant so as to give him a settlement as a yearly servant. And I think we should do infinite mischief if we were to overturn that which has been so long a settled rule. — GROSE J. No doubt can be entertained on the first point in the case respecting the parol evidence; that evidence was not produced to contradict, but to explain, the written agreement; and therefore it was properly received in evidence. But the difficulty is to reconcile the decision in *Rex* v. *Little Bolton* with that in *Rex* v. *Highnam*. In the former case, which has been chiefly relied upon here in the argument, it is to be observed that LORD MANSFIELD adopted the general rule that an intended apprenticeship shall not be converted into a service as a hired servant for a year, though he also said it would not be considered as an apprenticeship, unless the pauper were retained *as an apprentice*. Now it is stated in this case that in effect the pauper was to be an apprentice; an apprentice is a person who by contract is to be taught a trade, in contradistinction from a person who engages to serve another person generally. Here the pauper was, "to learn the business of a carpenter," which words as clearly evince it to have been the intention of the parties that he should be an apprentice as any other words that could have been used. But, as there were no indentures of apprenticeship executed, the pauper could not acquire a settlement as an apprentice; and then the general rule applies that he gained no settlement as a yearly servant. — LAWRENCE J. The first question raised by the counsel in support of the rule is, that the Sessions ought not to have received the parol evidence, because it contradicted the written agreement: but it was not offered for that purpose, but to ascertain a fact collateral to the written instrument, in order to explain the intention of the parties, the instrument being in some measure equivocal. That fact being established, the case was this; on the one hand the pauper paid a premium to the master, and was to receive certain wages, and on the other hand the master engaged to teach him the business of a carpenter: then the question is, whether or not by this agreement the parties were to stand in the relation of master and apprentice, of which (I think) no doubt can be entertained. In the case of *Rex* v. *Little Bolton*, LORD MANSFIELD only went thus far, that it must be collected from the words of the instrument whether or

(*a*) *Ante*, pl. 321.

(*b*) *Ante*, pl. 322.

(*c*) See also Rex v. Hitcham, *Ante*, pl. 309.

not the party is to serve as an apprentice: his Lordship could not mean to say that a contract of apprenticeship could not be formed so as to give a settlement to the party serving under it without the introduction of the word "apprentice." With regard to the instance put at the bar of servants at inns, it is to be remembered that they do not pay their money in order to learn a trade, but as a premium to the master to let them have the perquisites of that situation: but in the case of a trade, the relation of apprenticeship is created for the very purpose of the party being instructed in that trade; the two cases do not bear the smallest resemblance to each other. Therefore there does not appear to me to be any reason for shaking the authority of the case of *Rex* v. *Highnam*, especially as the great body of cases support it. It is much to be lamented that settlement cases should ever have been determined on nice distinctions; it would be better to decide them on some general rule that every person who reads may understand it. — LE BLANC J. On the first question that was made, it is sufficient to say, that I entirely agree with the opinion given by the Court that the parol evidence was admissible, as evidence of a fact collateral to the written instrument. With respect to the other question, I am inclined to adhere to the principle recognized in all the cases, that where the contract itself clearly appears to have been intended as a contract of hiring and service as a servant, it shall not, if defective as a contract of apprenticeship, be converted into a contract of hiring and service, so as to give the party a settlement as a servant. And if it be supposed that the case of *Rex* v. *Little Bolton* broke in upon that doctrine, I should rather be disposed to adhere to the general principle than to the decision in that particular case: but I do not think that the Court intended to decide in that case, that every contract of this kind must be considered as a contract of hiring and service unless the specific term "apprentice" be used. If by the terms of the contract the master, in consideration of a premium, engage to teach the other party his trade or art, it is the same as if he agree in express words to receive the other party *as his apprentice*, and to teach him his trade. But this case is distinguishable from that of *Rex* v. *Little Bolton* in that which forms a material part of a contract of apprenticeship; there no premium was paid, which was relied upon in many of the cases as a circumstance to show that the parties only intended to form a contract of hiring and service. Now, what is the present case? The master in consideration of a premium engaged to teach the pauper the business of a carpenter, and the pauper agreed to serve the master three years *to learn* that business; what is such an engagement but a contract of apprenticeship? and though it is not a perfect contract of apprenticeship in consequence of the agreement not being properly stamped, still, according to the principle in all the cases, such a defective contract shall not be converted into a contract of hiring and service. I am, therefore, of opinion that the pauper gained no settlement by serving under this contract. — Both orders confirmed.

The assent of two magistrates to a parish indenture is sufficiently sig-

508. *Rex* v. *Winwick*, *H. T.* 40 *G.* 3. 8 *T. R.* 454. — The pauper was settled by birth at *W*. The counsel for the parish of *W* offered in evidence an instrument purporting to be an indenture dated the 18th of *December* 1789, whereby the pauper

nified by one of them first signing it alone and being afterwards present when the other signs it.

was bound an apprentice by the parish officers of *W.* to one *Horn* of *S.* until he should attain the age of 21 years; and under which the pauper resided 40 days with his master at *S.* The instrument was signed by the Rev. Dr. *Freeman* and the Rev. Dr. *Preedy*, two of the justices for the county of *Northampton*; the same was signed by Dr. *F.* at the parish of *Long Buckley*, where he resides, and the Rev. Dr. *P.* was not then present; but a few days afterwards the Rev. Dr. *F.* went to the house of Dr. *P.* where the same was signed by the Rev. Dr. *P.* in the presence of all the parties. Under these circumstances the Sessions were of opinion that the indenture was void. — LORD KENYON C. J. This case is clearly distinguishable from that of *Rex* v. *Hamstall Ridware* (*a*), because, though one of the magistrates first put his signature to this indenture at a time when the other was not present, both the magistrates afterwards met on the subject, and agreed to the propriety of the measure when the other magistrate also executed the instrument. The principle on which this case is determined was recognized some years ago in a case of a murder; a magistrate, who kept by him a number of blank warrants ready signed, on being applied to, filled up one of these, and signed and delivered it to the officer, who, on endeavouring to arrest the party, was killed; the judges were of opinion that this was murder in the person killing the officer, and he was accordingly executed. And this was not a new principle then for the first time established; it had been always uniformly acted upon. But as the merits of this case had not been gone into at the Sessions, this case was sent down to be re-stated.

(*a*) *Ante*, pl. 503.

A contract under seal, and stamped, to serve another for three years, at so much *per* week, the master agreeing to learn the other a trade, and the latter agreeing, if he lost any time to the prejudice of his master, to abate so much *per* day, constitutes an apprenticeship. And at any rate, the pauper having served under it for more than a year gained a settlement, either as an apprentice, or as a hired servant.

509. *Rex* v. *Rainham*, *T. T.* 41 *G.* 3. 1 *East*, 531.—The pauper, on the 8th of *November* 1784, entered into an agreement under seal with one *Hills*, a sawyer, living in *Eltham*; which agreement is in the words and figures following, *viz.* "An agreement "made the 8th of *November* 1784, between *H.* of *E.*, sawyer, and "*M. Smith* of the same place; *viz. S.* doth agree with the said *H.* "to serve him for three years from the date of the agreement in "the following manner, *viz.* for the first year to be paid 10*s. per* "week, for the second year 11*s.*, and for the third year 12*s. per* "week. And the said *H.* doth agree and promise to learn the "said *S.* the art and mystery of a sawyer, which he now follows. "And it is likewise agreed, that if *S.* shall wilfully lose any time "to the prejudice of *H.*, he doth hereby agree to pay to *H.*, 3*s.* "*per* day for all such neglect. And it is hereby further agreed, "that if *S.* repents of this agreement before the time expires, he "promises to pay *H.* 10*l.* on demand; or if *S.* is sick, or by any "disorder or misfortune rendered incapable of work, not to receive "any pay from *H.*" The agreement was signed, sealed, and delivered by both parties, and lawfully stamped. No premium was paid by the pauper to *H.* The pauper in pursuance of the agreement immediately went to *H.*, and resided with him in *E.*, under and according to the terms and conditions of the agreement, for two years and a half. — LORD KENYON C. J. The Sessions have stated the deed and the service under it in fact, leaving this Court to draw the legal conclusion; and that can only be done in one way, namely, that this was a contract of apprenticeship. The instrument was under seal, and need not be indented. (*b*) It has been determined, that the party serving need not be retained

(*b*) Vide stat. 31 G. 2. c. 11.

eo nomine as an apprentice; but that it is enough if the purpose of the contract be, that the one shall teach and the other learn the trade. That is the case here; for the master engaged to learn, *i. e.* to teach, the pauper the art and mystery of a sawyer; and the object of the pauper was to be taught the business. No technical words are necessary to constitute the relation of master and apprentice: nor is it necessary that there should be any premium given to the master. — LE BLANC J. The contract was either to serve as an apprentice, or as a hired servant; it is immaterial which it was in this case; for as the pauper served above a year under the agreement, *quâcunque viâ datâ*, he gained a settlement. — PER CURIAM: Order of Sessions quashed.

Where the master and father of a boy agreed, under seal, that the master should teach the son the art and mystery of weaving for five years, and find utensils, and the son should receive half his earning, and the master the other half; under which the boy served out the time as an apprentice: Held, that this agreement between the father and master (to which the son was no party) not binding the son, or the father for him, to any service to the master; but the son's service, in fact, being merely voluntary, was no apprenticeship in point of law; and, consequently, no settlement could be gained by the son serving his master under such a contract.

510. *Rex* v. *Cromford*, *M. T.* 47 *G.* 3. 8 *East*, 25. — Upon appeal against an order removing *M. H.* from the township of *W.*, to that of *C.*, the Sessions confirmed the order, subject to the opinion of the Court on this case. The pauper's husband, *W. H.*, being settled at *C.*, went on the 1st of *May* 1796, being then 14 years of age, as an apprentice to *N. K.*, of *W.*, weaver, and continued to serve him as an apprentice for five years. The following indenture was executed by *N. K.*, the master, and *J. H.*, the father of *William*, but not by *William Higton* himself. "This agree-" ment, made the 1st of May 1796, between *N. K.*, weaver, and " *J. H.*, miner; and the said *N. K.* shall teach or cause to be " taught *W. H.*, the son of *J. H.*, the art and mystery of weaving, " &c. in the best way he can, for five years from the date above; " and that *N. K.* shall find *W. H.* all utensils belonging to the said " business; and that *W. H.* shall receive of *N. K.* half of what he " earns, and the remainder to *N. K.*: to which we have inter-" changeably set our hand and seal, the date above written. " (Signed and sealed by *N. K.* and *J. H.*") *W. H.* did not execute or become a party to any other indenture. — LORD ELLENBOROUGH C. J. said, here is neither a binding of the son himself apprentice, nor, if I may so say, of his parent for him: for there is no contract for his serving his master; nothing to bind the son to serve. He might serve in fact, but was under no obligation to do so: he only continued to be taught as long as he pleased, but was not obliged to stay. This was no apprenticeship. — The other Judges concurred; and LAWRENCE J. asked how any action could have been brought against any person for harbouring the boy as an apprentice: or how he himself could have been proceeded against under any of the statutes for regulating apprentices? — Order confirmed.

An indenture binding an adult as an apprentice, but not executed by such adult, does not constitute the relation of master and apprentice, and no settlement can be gained under it.

511. *Rex* v. *Ripon*, *H. T.* 48 *G.* 3. 9 *East*, 295. — The pauper, being 23 years of age, was put apprentice by her father-in-law, with her own consent, to one *H.*, in *Hunton*. She was present at the making of the agreement; but the indenture was only executed by her master and her father-in-law, but not by herself: neither was it ever tendered to her for that purpose, though she lived under it with her master for nearly 12 months in *H.* The Sessions were of opinion that she gained a settlement in *H.*; but the COURT of KING'S BENCH quashed the order of Sessions without argument; asking how it was possible to maintain

this to be a competent binding of an adult who was no party to the indenture?

After a pauper under age had hired himself generally for a year to a brick-maker, and served part of the time, they entered into a written contract, unstamped and without seals, whereby the pauper covenanted to serve his master for three years to learn to make bricks, &c., on certain conditions, but the master did not bind himself to teach him to make them: Held, first, that this contract was no proof of an apprenticeship being in the contemplation of the parties; but only a new hiring in the relation of master and servant, and, secondly, that such contract being void and illegal could not (even if it had shown an intention in the parties to contract for an apprenticeship) have done away with the original good contract of hiring and service.

(a) *Ante*, pl. 316.

(b) *Ante*, pl. 325.

512. *Rex* v. *Shinfield*, *M. T.* 52 *G.* 3. 14 *East*, 541. — Removal from *St. G.* to *S.* Order confirmed, subject, &c. *R. L.*, the pauper, in 1806, being a minor, hired himself for a year to *J. P.* of *S.*, brick-maker, and continued upwards of a year in *J. P.*'s service: in *September* 1806, the pauper (being still a minor) and *J. P.* signed the following agreement on unstamped paper, and not under seals, under which the pauper served the whole three years. "A memorandum and agreement between *J. P.* "and *R. L.* This agreement made, &c. between *J. P.* and *R. L.* "&c. I, *R. L.* do hereby covenant and agree to serve *J. P.* for "three years, to learn to make bricks, and the art of burning, "on condition of the said *J. P.*'s finding me the said *R. L.* suf- "ficient clothing, victuals, &c. on condition of my helping to "attend the kiln on nights. (Signed) *R. L.*" And in the margin was written, "I, *J. P.*, consenting to the said agreement." The appellants produced the pauper's mother, who swore that *J. P.* came to her, and asked her if she had any objection to her son being apprenticed to him, and she said no. The cases of *Rex* v. *Little Bolton* (*a*), and *Rex* v. *Eccleston* (*b*), were cited. — LORD ELLENBOROUGH C. J. This was the case of a person, who, though a minor, had power to contract for a hiring and service to another, or as an apprentice, according to the principle laid down in the case of *Drury* v. *Drury*, cited in 3 *Term. Rep.* 161., that if an agreement be for the benefit of an infant at the time, it shall bind him: and that has not been drawn in controversy upon this occasion; but it is admitted that if the case had stood upon a contract of hiring alone, it would have been good and binding to enable him to acquire a settlement in *S.* by a service under it. The only argument has been upon the effect of the real or supposed apprenticeship created by the instrument, which it is said put an end to the service under the original contract. But *quâcunque viâ datâ*, he gained a settlement in *S.*: for if the instrument were invalid as being a fraud upon the law, it is clear that there was no good apprenticeship created, because it was not created in the manner prescribed by the law: and if invalid, and not receivable in evidence, what is there to do away the former contract of hiring for a year? But supposing it to be valid, and not operating as an apprenticeship, but as a hiring in the relation of a master and servant, what is this but the case of a continuing service operating under a new contract of hiring, merely superadding other terms, whereby the servant was to have food and clothing provided for him in the manner stated, and an opportunity of learning the trade of his master, instead of seeking for a compensation for his service upon a *quantum meruit*. It is, therefore, necessary to determine whether or not this was a good contract of hiring and service, as created by the written instrument. And all the cases cited by the appellant's counsel differ from the present; because in none of them there was a good contract of hiring and service independent of the imperfect contract of apprenticeship in dispute. But here there was an original perfect contract of hiring and service, which was not defeated by an invalid instrument. With respect, however, to the case of *Rex* v. *Little Bolton*, the Court in the case of *Rex* v. *Eccleston*

considered it as a subsisting authority, whatever question there might be made on the subject at first; and I think the convenience of the thing is in support of it; but it is not necessary now to discuss that point. — Grose J. Here there was originally a good contract of hiring and service; and that was not done away with by a subsequent instrument, whereby the parties merely prolonged the duration of the contract, and fixed the compensation to be made by the master for the service. — Le Blanc J. To give a settlement by hiring and service there must be a contract of hiring for a year; and this case is distinguishable from all the other cases, in which the question has been whether the contract was to serve as an apprentice, or as a hired servant, where, if the Court considered that the contract was to serve as an apprentice, it could not enure to give a settlement as in case of a hired servant; for in none of those cases was there any valid contract of hiring and service existing before, independent of the instrument in question. But here the husband of the pauper had first entered into a good contract by parole as a hired servant for a year; and pending that contract he and his master entered into a written agreement; by which it is contended that the parties meant to contract for an apprenticeship; and that this, though invalid for the purpose of creating an apprenticeship, yet changed the nature of the circumstances under the former hiring into a service of apprenticeship, and therefore prevented the gaining of a settlement as a hired servant. But I do not accede to that argument: because if there were at one time a subsisting valid contract of hiring and service for a year; and, pending that, the parties enter into an invalid agreement, I do not see how that can do away the former valid contract. But even upon the construction of the written instrument itself, I do not think that it is to be taken as a contract of apprenticeship. In all the former cases, where the instrument in question has been so construed, it has been stated that the parties intended to contract in the relation of master and apprentice, only they had contracted informally in order to avoid the stamp duties. But here the contract is for *R. L.* to serve *J. P.* for three years to learn the art of a brickmaker, on condition of *J. P.*'s finding him in board, lodging, and clothes; there is no contract by the master to teach him, but only for the boy to have the opportunity of learning the business. It is said that no wages are reserved; but that is no more than what often happens with boys at service: they get less at first, because they must first learn their business before they can be of use to their masters in it. Then, though it is stated here that the boy was to serve his master to learn his business, that would not prevent it from operating as a contract of hiring and service. I do not, therefore, think that this was in the terms of it an agreement for an apprenticeship, so as to supersede the former contract of hiring and service. But even if it were intended as an apprenticeship, yet the instrument being invalid, would not supersede the former valid contract. — Bayley J. I consider the instrument as a contract of service, and not as an apprenticeship. There was an original good contract for a year, between the parties, as master and servant generally, and after three months' service under it, they entered into a new agreement, by which the boy was to serve his master for three years, not generally, but to learn to make bricks, and the art of burning, upon condition of being

found in board, lodging, and clothes. The meaning of the parties, therefore, was, that the general service before contracted for should be restrained to such service as would enable the boy to learn his master's business. If an apprenticeship had been intended, there would have been words introduced into the agreement binding the master to teach the boy; there being no such words of obligation on the master, and the written contract not having the ordinary words of binding to serve as an apprentice, and the intent of the parties, as collected from it, being at least equivocal, we are warranted by the cases in saying, that the object of it was merely to confine the general service before contracted for to such parts of the master's employ as would enable the boy to learn his business. If this, therefore, were to give an extraordinary benefit to the servant, the master might well stipulate for receiving such service without the payment of wages. — Orders confirmed.

Where the father of the pauper contracted with J. S. that his son should be with him, and should work with him for two years, and have what he got, and should allow 2*s.* *per* week out of his gains to J. S., viz. 1*s.* for teaching him the business of a frame-knitter, 9*d.* for the rent of a frame, and 3*d.* for the standing: Held, that this was a contract of hiring and service, and not an apprenticeship; and that the son's having served under it was evidence that he had adopted the contract made by his father; and, therefore, he was entitled to a settlement by such hiring and service.

(*a*) *Ante*, pl. 316.

(*b*) *Ante*, pl. 512.

513. *Rex* v. *Burbach*, *E. T.* 53 *G.* 3. 1 *M.* & *S.* 370. — Removal from *Burbach* to *St. M.*, *Birmingham*. Order quashed, subject, &c. The pauper being settled at *Birmingham*, his father made a verbal agreement with *R. P.* of *Burbach*, framework-knitter, that his son should be with him (*P.*) and should work with him for two years, and have what he got, and that he should allow 2*s.* per week out of his gains to *P.*; *viz.* 1*s.* for his (*P.*'s) teaching the business of a framework-knitter, 9*d.* for the rent of a frame, and 3*d.* for the standing of the frame. Nothing was said about his being an apprentice. The pauper went and served *P.* for two years at his house in *Burbach*, and had what he earned after the 2*s.* per week were deducted by *P.* who found a frame and all materials, but the pauper paid for the needles himself; and in regular work he earned about 10*s.* per week. The pauper had no right to work for any body else in *P.*'s frame, nor did he do so to *P.*'s knowledge: he received no wages, and boarded and slept all the time at the house of his father and mother in *Burbach*, where he also had his washing done for him; and he did not do any act as a servant for *P.* by his order; and on *Sundays* he was at his father's house. — In support of the order of Sessions *Rex* v. *Little Bolton* (*a*), was relied on. — Against the order it was contended, 1st, that the son was no party to the contract: 2d, that the authority of *R.* v. *Little Bolton* had been doubted, and that in *R.* v. *Shinfield* (*b*), the circumstance of there having been no contract by the master to teach, weighed much with the Court. — LORD ELLENBOROUH C. J. The ground of argument taken is, that the father was the contracting party, and could not bind the son. It certainly cannot be contended that the son would at all events be bound by the contract of the father; but in every case if a contract be made by a person standing in a peculiar relation to another, on his behalf and for his benefit, and that other performs his part of the contract, there is no authority which should restrain me from leaving it to the jury whether he did adopt the contract. It seems absurd to say that if a party contract on my behalf to do work, and I do it, that the rule of *omnis ratihabitio* does not apply. Every jury upon such a question would find a previous *mandatum* evidenced by the service afterwards. Here the son is acting as servant; but if it were doubtful, the Sessions have drawn the conclusion, and have not submitted to us any question whether he was bound by the contract. The question then is, Whether this is a contract of

hiring and service, or of apprenticeship? It certainly cannot be called an apprenticeship, nor does it bear any of its forms; for although there is mention of an allowance to be made by the son on account of the master's teaching him the business, yet that is not peculiar to the contract of apprenticeship: it enters into the contemplation of almost every contract of hiring and service, how far the servant has learnt his art, or stands in need of farther instruction; and according to his proficiency a consideration is made in the rate of wages. It is the measure to which each party resorts in apportioning the compensation; and if the circumstance of the servant's having to learn his art is to make any difference, it would change the nature of most contracts of hiring and service, even in the meanest situations, into that of an apprenticeship. As to *Rex* v. *Little Bolton* (a), without saying whether one quite approves the principle of that case, it is enough to say that the Court has been so much in the habit of acting upon that decision that it would now be dangerous to set it aside. I do not say that if that case were erroneous, and wholly destitute of legal foundation, it would not be right to set it aside; but if it stands on plausible grounds it ought not to be canvassed too nicely. This case is stronger than *Rex* v. *Little Bolton*; there the master agreed to teach the pauper if he would work with him two years and a half or three years; so that the teaching was the very essence of the contract. Here there is no express contract by the master to teach, only an allowance by the servant out of the earnings for teaching, which, perhaps, may amount to an implied one. I will not say that an action might not be maintained upon this contract for not teaching, although upon a demurrer to a declaration framed upon it there might be difficulty. Admitting, however, that such a contract may be inferred, it is by no means so clear as assumed in argument; and even if it were, it would not be so strong as *Rex* v. *Little Bolton*, which was an express contract. There Lord *Mansfield* observed upon the agreement not speaking of the pauper as an apprentice, and here there is no mention of apprenticeship, except as far as learning and teaching are ingredients in the contract of apprenticeship, which they are also in almost every contract of hiring and service regularly entered into. Therefore, without saying that *Rex* v. *Little Bolton* is not law, we cannot hold that this is not a good hiring and service. — GROSE J. The question is, Whether this is a hiring and service? I have no doubt it is. Looking at the agreement we may see what was the intention of the parties. The intention was that the pauper's husband should serve his master for two years, and he accordingly did serve him, and thus adopted the contract. — LE BLANC J. The statute law has enacted that a person may gain a settlement by apprenticeship or by hiring and service. But it has been decided, that if an apprenticeship be intended and not regularly carried into effect, it cannot enure as a hiring and service. A variety of questions, therefore, has arisen upon this distinction, whether the contract amounted to an apprenticeship or to a hiring and service; and whenever it has appeared from the nature of the contract that the parties intended an apprenticeship, although they have failed in perfecting it, the Court has decided that it could not take effect as a hiring and service. Here the Sessions have determined this to be good as a hiring and service, and unless the Court

(a) *Ante*, pl. 316.

see that their conclusion is wrong, we are bound to confirm the order. It is not stated in the case whether the pauper was an adult or infant; and that his father agreed with the master that he should be with him and work for two years, is all that is stated with respect to the service. The contract is made with another person on his behalf, and he serves under it. That would be evidence upon which I should think a jury might infer that he adopted it. The Sessions have so inferred, and there is no objection. If that be so, there is no material difference between
pl. 316. this case and that of *Rex* v. *Little Bolton* (*a*): with the exception of names, place, and trade, the cases are the same. It will not convert this contract into an apprenticeship, because the party was desirous of improving himself in the trade in which he was to work, or even stipulated for that purpose. Every workman who contracts for his labour, and is not perfect in his art, is desirous of learning more, and it forms an ingredient in every such contract. The Court, therefore, will not upon this ground hold it an apprenticeship, unless they see that something more than a hiring and service was intended. Now, here it was agreed that the pauper should work, and he did so: and he was to allow so much *per* week to his master for teaching him: which is the only circumstance relied upon to show it an apprenticeship. The question is, Whether that is sufficient to show that the conclusion drawn by the Sessions was wrong? I think not, after the case of *Rex* v. *Little Bolton*; and even if the case were new, I am not prepared to say that this would give it so much the colour of an apprenticeship as to prevent this settlement. — BAYLEY J. The Sessions might have trusted in this case to their own judgment, and should not grant cases unless they entertain serious doubts. They have drawn the conclusion, and unless we can say the premises do not warrant such a conclusion we ought to confirm it, although perhaps we might have drawn a different one. I do not say, however, in this case that we should. Allowing the utmost latitude in the arguments against the order, this was at least a contract of an equivocal nature, and the Sessions have decided upon it. I think they have decided rightly. — Order of Sessions confirmed.

Where the father agreed with R. that R. should take his son for six years, to teach him the trade of a framework-knitter, and he was to allow R. 9*s*. a week for the first three years, for teaching him and his board and lodging: Held, that this was a defective contract of apprenticeship, and, therefore, the son did not gain a settlement under it.

514. *Rex* v. *Mount Sorrell*, *E. T.* 54 *G.* 3. 2 *M.* & *S.* 460. — Removal from *M. S.* to *Q.* — Order quashed, subject, &c. — When the pauper was about 13 years old, his father made an agreement with one *R.*, of *Q.*, that *R.* should take his son for six years, to teach him the trade of a framework-knitter, and he was to allow *R.* 9*s. per* week for the first three years, for teaching him, and his board and lodging. And the pauper served the time in *Q.* And whether he was settled in *Q* was the question. The Court distinguished this case from *Rex* v. *Little Bolton* (*a*), inasmuch as, by this contract, the son was entitled to none of his earnings; and instead of receiving wages from his master, his master was to receive wages from him as the price of teaching him; it was a hiring of the master to teach the apprentice. The whole contract with the father was bottomed, and had for its object the instruction of the son and nothing else. — Order of Sessions confirmed.

(*a*) *Ante*, pl. 316.

515. *Rex* v. *Kilby*, *E. T.* 54 *G.* 3. 2 *M.* & *S.* 501.—Removal from *K.* to *G. W.*—Order quashed, subject, &c.—The pauper was born at *K.* His father died when the pauper was an infant, and the parish relieved the widow weekly, till he was nine years old; at which time the parish-officers wished to put the pauper out apprentice; but the widow objected. In consequence of her objecting, the parish-officers refused to give her any more relief. When the pauper was about 11 years old, the widow being no longer able to support him, and the parish refusing to relieve her until the pauper was put apprentice, went to the parish-officer, and told him she would consent that her son should be put apprentice. He bid her choose a master, and she chose one *D.*, of *G. W.*, to whom the parish-officer agreed to give 3*l.* 3*s.* in money, and other things, to the amount, in the whole, of 4*l.* The parish-officer, the pauper, his mother, and *D.*, met together, proposing to have the boy bound before the justices, and went before them for that purpose; but the justices finding, upon examination, that *D.* had as many apprentices as they thought he could do justice to, would not let him have any more. The parish-officer then declared, if he could not have him bound there, he would have him bound in another place, and, accordingly, took all the parties to an inn, and procured an indenture stamp, which was regularly filled up and executed, and the pauper, with the consent of his mother, bound himself to *D.* for seven years. The premium, 3*l.* 3*s.*, and the other things, making up the 4*l.*, were to be delivered to *D.* at the expiration of six weeks from the execution of the indenture, at which time *D.* went to *K.*, and received them of the parish-officer. The duty paid was 1*s.* 6*d.*, being 6*d.* in the pound upon the 3*l.*, and all the expences of binding were paid by the parish. The pauper served *D.* in *G. W.*, sufficient length of time to gain a settlement if the binding was good. The Sessions founded their judgment on the ground of fraud upon the above facts.—LORD ELLENBOROUGH C. J. This does not appear to have been intended to be a binding as a parish-apprentice; if it did, it might be defective. But it is, independently of the statute, a binding with the consent of the mother, the son, and the master. The justices have, indeed, found fraud; but there are no circumstances to warrant such a conclusion, except that, when the parties could not obtain the binding before the justices, they went elsewhere, and perfected it in another way. It is said, this was the parish money, and, perhaps, there has been a misapplication of it; but still there has been a valid binding; for the pauper, with his mother's consent, binds himself. If the mother had been a party to the indenture, and the action had been brought against her upon it, I do not see how she could have effectually pleaded *per fraudem*, or *per minas*.—LE BLANC J. It appears that the mother chose the master, and it is not stated that the child was of an age not fit to be bound apprentice.—BAYLEY J. After the allowance was withdrawn, the mother might have obtained relief by application to the justices, if she had been entitled to it.—Order of Sessions quashed.

Where the parish officers, wishing to put out a child of the age of nine years as apprentice, upon the refusal of his mother withdrew her parish allowance, but two years afterwards, she not being able to support him, went to the parish officer, and consented to her son's being put out, and by desire of the parish-officer chose a master, to whom the parish-officer agreed to give 3*l.* 3*s.* &c., and afterwards all the parties met and went before the justices, who, thinking that the master had already a sufficient number of apprentices, refused to bind the son, whereupon the parish-officer, declaring that if he could not have him bound there, he would elsewhere, took the parties to an inn, and procured an indenture, which was filled up and executed, and the son, with the mother's consent, bound himself for seven years: Held, that the Sessions were not warranted in finding fraud so as to defeat the settlement under the indenture.

516. *Rex* v. *Arundel*, *T. T.* 56 *G.* 3. 5 *M.* & *S.* 257.—Upon appeal the Quarter Sessions quashed an order for the removal of *G. S.* from *A.* to *F.*, subject, &c.—The pauper was bound apprentice to one *B.*, by indenture, in the usual form, having a thirty

An infant may bind himself apprentice by indenture, because it is for

shilling stamp, and regularly executed by *B.* and the pauper, but not signed by any of the parish-officers of *A.*, or assented to by any of the justices, and the question was, Whether the signature of the parish-officers, and the assent of the justices, were necessary to the validity of this indenture under the following circumstances? The pauper was a cripple, settled in *A.*, and his mother, in the first instance, applied to *B.*, and expressed a wish that her son might be placed with him as an apprentice. The pauper, at the time when the indenture was executed, was 18 years of age, and had been, for about a year before, and was then, in the *A.* workhouse, from whence he went to the attorney's office, where the indenture was executed, and met there his father and the parish-officer, and it was agreed, between *B.* and the parish-officer, that the pauper should go into the service of *B.*, and that the parish should pay the sum of 40*l.*, and which was paid, accordingly, out of the fund belonging to *A.* The pauper's father was present when the indenture was executed, and it was read over at the time. The pauper stated, at the Sessions, that he had not been previously consulted, and that it was not with his good will that he went into the service, but that he never expressed to any one any objection to being bound. *B.*, at the time of the execution of the indenture, lived at *P.*, and continued there a year and a half afterwards, and then removed to *F.*, accompanied by the pauper, who continued in that parish, with his master, under the indenture, for nearly a year. The Sessions considered the pauper as having been put out by the parish, and that, under these circumstances, the indenture was void.—Lord Ellenborough C. J.: This indenture must be considered clearly as for the infant's benefit, and not having been vacated, it must be considered as binding, so as to confer a settlement on him by reason of his service under it. This was not the binding of a parish-apprentice; it was to a person not residing in the parish, and all that the parish-officers did was, the advancing of 40*l.* as the premium. As to any supposed controlling influence of the parish-officers, I do not see how we can enter upon that subject, nothing being stated concerning it in the case. The influence, however, seems to have been that of the mother; the parish-officers make the advance, and the pauper executes the indenture. I think the binding was, undoubtedly, for his benefit, and, therefore, valid.—Bayley J.: The pauper executed the deed without objection, and there was not any compulsion used at that time. Per Curiam: Order of Sessions quashed.

III. *Of the Time and the Place of Inhabitancy.*

apprentice, being bound, serving in extra-parochial place, can be removed

517. *Clerkenwell* v. *Bridewell*, *H. T.* 11 *W.* 3. *Ld. Ray*, 549.—*A.*, who had been educated in *B.*, as an apprentice to one of the masters of the hospital, in the trade of *hemp-dressing*, came to the parish of *C.*, and was removed by two justices from thence to *B.*, which is an extra-parochial place.—Holt C. J.: The justices of peace have no authority to settle any person in an *extra-parochial* place; for the statute which gives them authority extends only to the poor within parishes. Parishes in reputation are within the act, but places extra-parochial are out of the act. And the order of justices was quashed.

1 Carth. 515. 1 Ld. Raym. 486, 487. Comb. & Rem. 98. Foley, 98.

apprentice must reside 40

518. *Misseuden* v. *Grimsfield*, *H. T.* 1 *G.* 1. *Foley*, 157.—*A.* was bound an apprentice with *J. N.*, at *G.*, by indenture;

upon sealing the indenture, it was agreed, by parol, that *I. S.* should live with his master for one fortnight, and with his father, in *M.*, the next fortnight; and it appeared that he never lived 40 days together with his master.—The question was, Whether this was sufficient to gain a settlement in *G.*?—And it was held not; because this was fraudulent.

days as an apprentice under the indentures to gain a settlement.

519. *Rex* v. *St. Olave's Jewry*, *E. T.* 3 *G.* 1. EDITOR's *MSS.*—Two justices removed *O.* from the parish of *St. G.*, in the county of *M.*, to the parish of *St. O.*, in *L.* The Sessions, on appeal, confirmed the order, and stated the following case:—The pauper, *O.*, was bound apprentice to a man of the name of *H.*, who was *a cobbler*, and rented a stall in the parish of *St. O.*, at 10*d.* a week. The stall was only large enough to hold one person at a time. The apprentice, *O.*, while his master was at work in the stall, used to stand in the street and go of errands; but when his master was absent, he then sat and worked in the stall. The cobbler lodged in the parish of *St. G.*; and the apprentice lived with, and slept at the house of, his father, near *M. E.*, in the parish of *St. M. M.*, *W.* The Sessions were of opinion, that the pauper was settled in *S. O.*, where he *served* under the indenture. —PARKER C. J.: The cobbler is certainly not an inhabitant by virtue of his stall; he is not such a resiant as may be summoned to attend the court-leet; for if a house stand in two leets, the owner is only resiant in that where his bed stands. It is true, that a man may be charged to many parochial contributions, though he be not actually inhabiting the parish; but a man cannot gain a settlement without being an inhabitant. This case is not like that of a servant hired to a sojourner, for a sojourner is an inhabitant. A porter plying at the corner of a street, might as well give an apprentice a settlement in the parish where he plies. It does not appear to me that the pauper can gain a settlement in either of these three parishes; and PER TOTAM CURIAM, the order was quashed.

A cobbler's apprentice attending at his master's stall in the day-time, and going on errands in the way of his business, is not a sufficient *inhabitancy* to gain him a settlement in the parish.
S. C. Foley, 158. Sett. and Rem. 82. pl. 106. 1 Sess. Cases, 115. pl. 112. Stra. 51.

520. *St. Mary Colechurch* v. *Radcliffe*, *T. T.* 3 *G.* 1. EDITOR's *MSS.*—The pauper, *C.*, was bound an apprentice to *S.*, a seafaring man, and *served* him for a quarter of a year, at his house in *St. M. C.*, in the day-time; but lay every night on board his master's ship, in the parish of *R.* The Sessions conceiving the settlement to be where *the service* was, removed him to the parish of *St. M. C.*—CORBETT *Serjeant*, upon the authority of *The Cobbler's* case (*a*), moved to quash the order.—By THE COURT: The words of the statute are, "If any person shall be bound an apprentice, and *inhabit* in any parish," &c. The question, therefore, is, Whether the pauper was an *inhabitant* of the parish of *St. M. C.*? For this species of settlement arises from inhabitancy. Now a man can only be said to inhabit the place in which he lies, or where he lodges. But in this case there is certainly no inhabitancy.—PARKER C. J.: It is only stated in the case that he lodged on board the ship; but if it had appeared that he went on board the

A captain's apprentice who *lodges* on board of his ship in a different parish, is not a sufficient *inhabitant* of the parish to gain a settlement.
S. C. Str. 66. 1 Sess. Cas. 128. pl. 116. Sett. and Rem. 81. pl. 105. Fort. 306. Foley, 223.

(*a*) Mr. Burn says, "This case "seemeth to stand alone, and by the "analogy of the other case with respect "both to apprentices and servants, it "seemeth that the cobbler's apprentice "gained a settlement in the parish "where he lodged: a man may be occupier in several parishes in the day-"time, but his home and habitation "seems to be where he draws to at "night." *Ante*, pl. 519. See the case of St. John Baptist *v.* St. James, *post*, pl. 522. and the following cases, which appear to warrant Mr. Burn's opinion.

ship to watch, and do service on board for his master, as to take care that the goods were not embezzled, that would make a settlement: and to this opinion PRATT J. assented.—The order was quashed. (*a*)

A residence of 40 days may be intended.
S. C. Str. 579. S. C. 1 Sess. Cas. 279.

521. *Rex* v. *Cirencester*, *H. T.* 10 *G.* 1. *Sett. & Rem.* 119.—The pauper was bound apprentice to a butcher at *C.* He lived with his father for the first six years, and then came and lived with his master up and down for three quarters of a year. It was objected, that it did not appear that he had lived 40 days with his master. —But THE COURT was of opinion, that as it was stated that he was "up and down three quarters of a year with his master," there was room to intend that he had resided with him 40 days.

An apprentice who serves his master in one parish, and boards and lodges with his father in another, although paid for by the master, and in pursuance of a covenant in the indenture, does not gain a settlement in the master's parish.
S. C. Str. 594. Ld. Ray. 1371. Sett. & Rem. 118. pl. 159. Fort. 321. 8 Mod. 285.

522. *St. John Baptist* v. *St. James*, *M. T.* 11 *G.* 1. EDITOR'S *MSS.* — Two justices removed *W.* from the parish of *St. J. B.* to the parish of *St. J.* The Sessions, on appeal, quashed the order, and stated, *inter alia*, that *W.* was, by an indenture executed two years after the date thereof, bound an apprentice to *P.*, hosier, in the parish of *St. J. B.*; that in pursuance of the said indenture, *W.* began to serve him, the said *P.*, in his open shop, in the said parish of *St. J.*, but had (pursuant to a covenant in the indenture) his meat, drink, washing, and lodging (*b*), during all the time, with his father in the parish of *St. J.*, other than market-days and *Saturdays*, when he received his meat and drink with his master in *St. J. B.*, but that he never lodged one night with his master, or elsewhere, in the parish of *St. J. B.* during the apprenticeship; and that his master, pursuant to another covenant in the indenture, paid the father 2*s.* 6*d.* a week in lieu of, and in consideration of his maintenance and lodging as aforesaid. — FORTESCUE and RAYMOND Js. quashed the order of Sessions, because binding an apprentice and serving will not make a settlement; but the settlement must be by inhabiting, which cannot be but when the party lodges for 40 days.

An apprentice gains a settlement where he sleeps the last 40 days, though his master had no settlement in the parish.
S. C. Sett. and Rem. 65. 1 Sess. Cases, 88. c. 86. Foley, 152.

523. *Stoke Fleming* v. *Berry Pomroy*, *H. T.* 1 *G.* 2. EDITOR'S *MSS.* — The fact specially stated in the order was, that *E.*, a poor child, in the parish of *S. F.*, was bound an apprentice to *P.*, who was a settled inhabitant and owner of some lands in the said parish. The pauper served there for two years, and then removed with her mistress from the parish of *S. F.* into the parish of *B. P.*, where the said *P.* lived with her son, and in this last parish the pauper served her mistress the rest of the apprenticeship. But the said *P.*, being a person of ability, gained no settlement in the parish of *B. P.* The Sessions were of opinion that the pauper had gained a settlement in *B. P.*, although her mistress had gained no settlement there. On a rule to show cause why the order of Sessions should not be quashed, it was contended in support of the order, that the settlement gained by an apprentice under the indenture is gained in his own right, and not in right of

(*a*) *Vide* the case of Rex *v.* Burton-Bradstock, *post*, pl. 525., and Rex *v.* Spotland, *post*, pl. 589.

(*b*) In the report of this case, Sett. and Rem. 118. pl. 159., it seems that this covenant was introduced to accommodate the master, he having but *a small house*; but no such circumstance appears in the order; which is recited *verbatim* 8 Mod. 285; and in S.C. Fortescue, 311, it is said the Court held, that the apprentice was settled in the parish where he had lodged. *Qu.* therefore the cases of Rex *v.* St. Olave's, *ante*, pl. 519., and St. Mary Colechurch *v.* Radcliffe, *ante*, pl. 520.

master, as in the case of parent and child, and, therefore, may e settlement in a place where the master has none. — BELLD Serjeant, against the order, urged, that by the words of the V. & M. c. 11. §. 8. the binding and inhabitancy must be in the e place; that an apprentice cannot during the apprenticeship ny act to gain a settlement for himself (a), and therefore his lement under the indenture must depend on the settlement of master; and that this is not like the case of a *hired servant*, may gain a settlement in a place where the master has none. PARKER C. J. It is admitted that a hired servant may gain a lement in a parish by service, though not hired in the parish. words of the clause respecting apprentices are altogether as ng as those relating to servants. I think, therefore, that there difference. — And it was held, PER TOTAM CURIAM, that the per, though not bound in the parish of *B. P.*, was settled there nhabiting with and serving her mistress in that parish the last lays.

(a) See Buckington v. Shepton Bechamp, *post*, pl. 539. S.P. determined in St. Bride's v. St. Saviour's, 2 Salk. 533. Walburn v. All Saints, Foley, 150.

24. *Rex* v. *St. Peter's-on-the-Hill*, *H. T.* 14 *G.* 2. *MSS.* — *J.* gained a settlement at *St. M.* by a hiring and service, and rwards was bound an apprentice in *St. P.'s* to a carpenter for n years, two of which he *served* in *St. P.'s*, but during those years he *lived*, *eat*, and *lodged at night*, with his mother in the sh of *St. O.* — LEE C. J. There is a distinction in this case reen *apprentices* and *servants*. The statute is, that APPRENs gain a settlement by *binding* and *inhabiting*, not by *binding service*. But SERVANTS gain a settlement by *hiring* and *ser*, without regard to inhabiting. The case of *Rex* v. *St. John*, *Devizes*, seems to me a very odd determination (b); all the cases I acquainted with being to the contrary, as *St. Mary Colech* v. *Radcliffe*. (c) *Rex* v. *Graveney*. — The order removing pauper from *St. O.* to *St. M.* was affirmed. (d)

If an apprentice *serve* in one place and *reside* at another, he gains a settlement at the place where he resides. Cald. 56. *notis.*

(b) Trin. Term, 10 G. 1.

(c) *Ante*, pl. 520.

25. *Rex* v. *Burton-Bradstock*, *E. T.* 5 *G.* 3. *Burr. S. C.* 531. being settled at *B.* was, by indenture, dated 28th *March*, bound apprentice to *M.*, of *B.*, then owner of a ship called *John and Samuel*, to serve him as an apprentice, and to learn gation and the art of a sailor, for the term of seven years. *C.*, diately after executing the indenture, entered on board the and there served *M.* for the said term, as such apprentice. ship, during all the time of the apprenticeship, was employed coasting-trade from a place called *Bridport-Harbour*, in the ty of *D.*, to many other ports; and during all that time the harbour was, and was considered by the captain and sailors e ship as the proper home of the ship, and where she returned e end of every voyage, and always took her departure from ce in the several voyages that she made. During the said the ship was many times in *B. H.*, sometimes for a fortnight, times a month, and sometimes two months at a time; but in any other port, harbour, or place, for more than a month ime. On the 7th day of *December* 1760 the ship arrived in ., and continued there till the 22d of *January* 1761, being than 40 days; during which time *C.* resided, lodged, and d *M.*, his master, as his apprentice, on board the ship, and e care thereof, and of his master's goods therein, it being

An apprentice to the captain of a ship, who serves the last 40 days on board while the ship is lying in her harbour, gains a settlement in the parish within which the harbour lies. See Rex v. Friendsbury, *ante*, pl. 401. Goring v. Moulsworth, *ante*, pl. 396.

See the case of Rex v. Graveney, 221. *ante*, pl. 495., and Mr. Caldecot's d to in this case, Fortes. Rep. observations thereon, Cald. 55. *notis.*

his business, as *M.*'s apprentice, to take care of and secure the goods on board the ship, and to prevent their being stolen or embezzled. The ship was never in any other place or port 40 days after that time. On the 11th day of *March* 1761 the ship again returned to *B. H.*, and stayed there till after the 28th day of the same month, on which day the apprenticeship expired; and during that time *C.* resided, lodged, and served *M.* as his apprentice on board the ship, to take care thereof, and of the goods therein. *B. H.* is a basin within the parish of *B. B.*, which about 20 years ago, in pursuance of 11 *G.* 2. was dug and made on a piece of land lying within the parish of *B. B.*, and part of the manor of *B. B.*, and which then belonged to Mr. *G. P.* (of whom the said piece of land was purchased); and at the time when the basin was made, a cut was also made through the land, which then lay between the place where the basin was made, and the sea, to let the sea up to the basin; through which cut ships sail into the basin.—LORD MANSFIELD: There do not appear to be any former determinations on this subject. Therefore, as we shall gain nothing by looking for them, we may as well make an end of the matter now. Lying in a parish is the same, whether it be on board a ship, or on land. Casual residences, or accidental inhabitancies, are out of the present case. This harbour or basin is stated to be the proper home of the ship; and to be within the parish of *B. B.*; and the service was, *bonâ fide*, without any pretence of collusion, performed in that parish: therefore there seems to be no material difference between this case and the ordinary cases of gaining settlements in parishes by apprenticeship.—Mr. JUSTICE WILMOT: If the apprentice had laid in a house at land within this parish, it had been no question; the apprentice had then been undoubtedly settled there, though the master had lived in another parish. And here *B. B.* had as much benefit from the apprentice's labour, as if he had lain there by night in a cot upon land. Therefore the apprentice's settlement is clearly in *B. B.*—Mr. JUSTICE YATES concurred that the settlement was in *B. B.* This place was the proper home of the ship: it was not a casual residence or an accidental inhabiting. It is expressly stated, "that this harbour was, and was considered as the proper home "of the ship." So that the cases about casual residences are not at all like the present case. And this harbour or basin is expressly stated to be "within the parish of *B. B.*"—Mr. JUSTICE ASTON concurred, and observed, that the statute of 13 & 14 *Car.* 2. *c.* 12. was made to restrain the migrations of idle vagabond people from parish to parish, and for removing them back to their own former parish. He said, he thought that mere watching on board a ship was not a residence sufficient to gain a settlement within 3 & 4 *W. & M. c.* 11. Nor will a vessel, *in transitu*, accidentally stopping at a port to repair a leak, or take in water, or any such casual occasion, gain a settlement to the sailors on board. But this was the proper home of the ship; it is expressly and circumstantially so stated: and this home of the ship is stated to be within this parish of *B. B* (*a*). A casual inhabitancy only to watch a ship (which I should think will not gain a settlement) is very different from an apprenticeship served on board it at its proper home.

An apprentice who marries

526. *Rex* v. *Castleton*, *M. T.* 7 *G.* 3. *Burr. S. C.* 569.—*Holroid* was regularly bound an apprentice to *Rigby* of *C.*, hatter, for

the term of seven years, and worked, dieted, and lodged with his master in *C.* for four years and a half; and then married a woman who lived in *H.* After such marriage, he worked and dieted all along with his master in *C.* in the day-time, where his master lived, lodged, and carried on his trade; but he lodged at nights with his wife at her father's house in *H.*, until the expiration of his apprenticeship, which was about two years and a half from the time of his marriage. *R.*, the master, was acquainted with the intended marriage of his apprentice, and did not take any advantage of the covenant in the indenture, so as to vacate the same; nor did he, before the solemnization thereof, or at any time afterwards, find fault with his apprentice for so doing. The master was not asked, nor did he give leave to his apprentice to lodge in *H.*; though he knew he lodged there with his wife, at her father's house. — The question was, Whether *the place* where the apprentice lodged at nights was not the legal place of his settlement? And it being agreed by Mr. DUNNING, who was to contend on the other side, and confirmed by LORD MANSFIELD, that the place where an apprentice *lies* is the place of his settlement, the original order, adjudging the pauper's settlement to be at *H.*, was affirmed.

during his term, serves his master by day in one parish, but sleeps at night in a different parish, gains a settlement where he lodges the last 40 days.

527. *Rex* v. *Chick*, *T. T.* 14 *G.* 3. *Burr. S. C.* 782. — *H.*, of *W.*, slater, was bound an apprentice by indenture for three years, without any consideration, to *T.*, of *W.*, slater. He served under the indenture nine months. His master died. He continued a fortnight with the widow to complete the work unfinished by his master. The mistress afterwards, having no employment for him or any other workmen, told him, that he must not stay with her, and that he was at liberty to go where he thought proper. He and other workmen quitted her; but he apprehended that his mistress had a right to call him back to finish his apprenticeship. On parting with his mistress, he told her that he was going to his father, who was a slater. There was no particular agreement between his father and his mistress, to his knowledge, nor were the indentures delivered up. His father lived in the parish of *C.*; and he continued with him for two or three years. — THE COURT held the settlement to be in *W.*, for it sufficiently appeared, that he served 40 days as an apprentice in that parish, and, therefore, his settlement remained there.

If the master die after the apprentice has served 40 days, and he goes, with the consent of his mistress, before administration, back to his father, but without any particular agreement, or the indenture being delivered up, he gains a settlement in *the place* where *the master* lived, for he was neither *servant* nor *apprentice* to his *father*.

528. *Rex* v. *Sandford*, *T. T.* 26 *G.* 3. EDITOR'S *MSS.* — The pauper, *W.*, was legally settled by birth in *B.*, and, at the age of 11 years, was bound an apprentice by the churchwardens and overseers to serve *S.*, of *B.*, until he should attain the age of 24 years. He lived with *S.* for five years, when his master gave him up his indentures, and recommended him to live with *V.*, of *C.*, with whom *W.* made an agreement *as a servant* for three years. While he was in this place, his original master had a conversation with *V.*, and desired him to keep back some of *W.*'s wages to provide him with clothes, apprehending that otherwise he would run upon him. About the expiration of that time, *W.* returned into the parish of *B.*, where his master *S.* still resided, and lived with one *T.*, a butcher there, with *S.*'s knowledge, who frequently conversed with *T.* while *W.* lived with him, but not on the subject of his apprenticeship. After *W.* had lived with *T.* about

Inhabitation at different periods, though a hiring and service for a year has intervened, may be connected so as to make a 40 days' residence under indentures; and the settlement shall be in that place where the pauper lodges the last night. See S. C. *post*, pl. 572.

three months, he went back to *S.*'s house, and lived with him for a month, paying him 6*d.* a week for his lodging. — THE SESSIONS were of opinion, that *W.* had not gained a settlement in the parish of *B.* — Mr. CLAPP admitted, that the indentures remained uncancelled, and in full force, for that the pauper being under age, he could not be discharged from them without the consent of the parish-officers; but contended, 1st, that the service with *V.* at *C.*, being with the consent of the original master, was a service under the indentures; and, 2dly, that he had not gained a settlement in *B.*, because the original master never consented to his service with *T.*; and his subsequent residence for a month in the house of *V.* could not be joined with his former services to him, on account of the intervening settlement at *C.*; and he cited *Rex* v. *Fremington* (*a*), as decisive of *this point.* — Mr. FANSHAW as to this last point contended, that in *Rex* v. *Fremington*, the question of alternate residence was never considered, and that if any service continued, all did, and then the pauper will be settled in the last place of residence: that in the case of servants, this point had been settled in *Rex* v. *Lowess* (*b*), and *Rex.* v. *Hulland* (*c*); and there was no foundation for any distinction as to alternate service between a servant and an apprentice. In the statute 13 & 14 *Car.* 2. *c.* 12. *s.* 1. servants and apprentices are all classed in the same clause; both gain a settlement by residence, not by the place where the service is performed. It is not necessary that the 40 days' residence should be successive, and this rule holds in both cases; there is no difference in the principle, but only in the circumstances of the one being a contract for years, and the other a contract for a year. — THE COURT, were of opinion, that the time of service may be coupled as well in the case of an apprentice as of a servant: and that upon this part of the case, by connecting the month's service with the former service with *V.*, the pauper gained a settlement by an inhabitation of 40 days under the indentures of *B.*

(*a*) *Post*, pl. 560.

(*b*) *Ante*, pl. 220.

(*c*) *Ante*, pl. 407.

If an apprentice live with his master 40 days in *A.*, then 40 in *B.*, and then one day in *A.*, he is settled in *A.*

529. *Rex* v. *Brighthelmstone*, *E. T.* 33 *G.* 3. 5 *T. R.* 188. — *J. H.* was, at the age of 15 years, bound apprentice, by indentures, to *S.*, of *A.*, weaver, to serve from the 3d of *November* 1774, for seven years. He entered accordingly into the apprenticeship; and served and resided with *S.*, in *A.*, from the 3d of *November* 1774, until the 9th of *July* 1781; from that time until the 21*st* of *September* following he served and resided by direction of his master in a shop hired by his master at *B.* He then returned to, and continued to serve and reside with his master in *A.*, until the 22d of *October* following, when he was sent by his master to the master's father, *J. S.*, in the parish of *W. G.*, to serve out his apprenticeship; where he resided to the *November* following, when his apprenticeship expired. — LORD KENYON C. J. This case has been ingeniously argued, and an attempt has been made to distinguish the cases of servants from those of apprentices in this respect; but I do not think that that distinction can be supported, but that they both fall within the same rule. In the cases of *Rex* v. *Fremington* (*d*), and *Rex* v. *St. George, Hanover Square* (*e*), it was taken for granted, and strongly intimated by *Page* J. in the latter, that the apprentice was settled in the parish where the last 40 days' service was unbroken and connected. Other cases say, that that is not the rule, but that the settlement is to be ascertained

(*d*) *Post*, pl. 560.

(*e*) *Post*, pl. 556.

by the last day's service, provided there be 40 days' service in the whole in that place. As these cases depend on the positive words of an act of parliament, I wish that the act had been referred to as the ground of decision; and it certainly ought to be our guide, unless the determinations upon the point have varied from the words of the act. Under the 13 & 14 *Car.* 2. a residence in a parish for 40 days conferred a settlement: subsequent statutes have superadded other qualifications; the binding by deed of apprentices; and the hiring for a year, and service for a year by servants; and unless both those circumstances concur, no settlement is acquired by a residence for 40 days; but if they both concur, the statute 13 & 14 *Car.* 2. appears to be the law, which confers the settlement, namely, the 40 days' residence. If a servant serve 40 days in one parish, and then serve any time short of 40 days in several different parishes, he is settled in the former, if he complete the year: but if there be a residence for 40 days in several parishes, the settlement floats from place to place, and is at last fixed, as I always understood, where the last 40 days' service is performed. During my practice at the Sessions, the residence of 40 days was considered as the criterion: it was then understood that, as a settlement is a durable thing, it could not be defeated but by another complete settlement gained subsequently, and that a subsequent complete residence for 40 days in one parish was necessary to defeat the settlement previously acquired in another. If, therefore, this were *res integra*, and there were no determination to the contrary, I should have thought that this pauper was settled in *B.*; but the modern cases are, certainly, against such a decision; and as they are uniform, I desire that my doubts may not disturb them. With those decisions I therefore acquiesce, merely because these subjects should not remain in doubt.—Ashhurst J. According to all the modern authorities, it is not necessary that the 40 days' residence should be successive, but they may be coupled together so as to make 40 days in the whole. It was established in *Rex* v *Lowess* (*a*), that the settlement is shifting until the end of the year, and is at last fixed where the servant sleeps the last night, if there be a residence for 40 days in that parish in the whole. This line has also been adopted in other cases. That, therefore, being the rule according to the general current of the late authorities, and it being immaterial whether the rule were originally established one way or the other, I think it ought to govern the present case.—Buller J. When the case of *Rex* v. *Hulland* (*b*) came before the Court, I did not entirely agree with the opinion laid down by the Court in some of the former cases, and I thought that the rule contended for, by the counsel who argued against that opinion, might have been a proper one; but as the great object in settlement cases is to have a fixed rule, I found myself bound by the opinion of the Court in *Rex* v. *Lowess*; and from that time to the present I have always considered it as a fixed principle, that the pauper is settled in the parish where he sleeps the last night, provided there be 40 days' residence there in the whole. If so, it is better for the public that we should adhere to that rule than consider first principles.—Grose J. It is now too late to resort to that kind of reasoning which would have influenced my opinion if there were no determination upon this subject; because it has been established in several cases, that a servant gains

(*a*) *Ante*, pl. 220.

(*b*) *Ante*, pl. 407.

a settlement in the parish where he sleeps the last night, if he have resided there 40 days in the whole; and it was expressly held in *Rex* v. *Sandford* (*a*), that there is no distinction in this respect between the case of a servant and an apprentice.

(*a*) *Ante*, pl. 528.

The residence of an apprentice with his grandmother in a different parish from his master, on account of illness, though with the consent of the master, is not referable to the apprenticeship, so as to gain him a settlement in such parish.

530. *Rex* v. *Barmby-in-the-Marsh*, *E. T.* 46 *G.* 3. 7 *East*, 381. — Two justices removed *J. M.*, his wife, and children, by name, from the township of *B.* to *S.* The Sessions on appeal reversed the order, subject, &c. The pauper, *J. M.*, was bound apprentice by indenture dated the 1st of *April* 1794, for four years, to *J. B.*, of *H.*, in the west riding, who was the master of a small vessel trading on the river *O.* The pauper slept more than 40 nights during such apprenticeship at *S.*, at different times, but slept the last night thereof at *B.*, at his grandmother's, in which latter place he had before slept more than 40 nights in consequence of his being ill of a fever. He so went to *B.* with the consent of his master, who received him again as his apprentice, and he never slept there except as above stated. — LAMBE, in support of the order of Sessions, contended that the pauper was settled at *B.*, having slept for more than 40 nights, including the last day of his apprenticeship, in that township, *with the consent of his master*. And the circumstance of his going to his grandmother there on account of illness cannot vary the question; for the apprenticeship still subsisted in point of law, and all the cases go upon the point of the master's consent to the residence in any place for 40 days, which is here expressly found. The case of *Rex* v. *Tichfield* (*b*), (which had been mentioned on a former day when this case was first called on, as deciding against the settlement in *B.*), went on the ground of the indentures having been delivered up, and thereby virtually cancelled before the residence with the pauper's father on account of illness. But he relied on *Rex* v. *Charles* (*c*), where the apprentice, having become a cripple, was put by his master to live at his grandmother's at 1*s.* 6*d.* a week, in another parish, where he resided the last 40 days; by which residence he was deemed to be settled there. — ASTON J. said, that that could not be deemed a casual or accidental residence, and, therefore, distinguished it from cases of that sort. And this is no more a casual residence than that was. — THE COURT were all of opinion that the residence of the pauper in *B.*, being on account of his illness, was not a residence *as an apprentice:* and that the statute 3 *W. c.* 11. which directs that if any person shall be bound an apprentice and inhabit in any parish, *such binding and inhabitation* shall be adjudged a good settlement, &c. must be understood of an inhabitation referable in some way to the apprenticeship. But that the residence here with the grandmother was no more referable to the apprenticeship, than if the pauper had resided in a hospital or prison. — Order of Sessions quashed.

(*b*) *Post*, pl. 543.

(*c*) *Post*, pl. 565.

An order of removal, directed to "*the parish of Poole*, or town and county of Poole," is sufficient, though the proper name of the parish be

531. *Rex* v. *Topsham*, *T. T.* 46 *G.* 3. 7 *East*, 466. — Two justices made an order for the removal of *C*, mariner, from *T.* to *P. or town and county of* Poole; which order was addressed to the churchwardens and overseers of the poor of the *parish of T.*, and to the churchwardens and overseers of the poor of the *parish of* P. *or town and county of* Poole; and adjudged the settlement to be in the latter place by the same description. An appeal was lodged against this order by the parish-officers acting for the town of *P.*, to whom the pauper was delivered with the order: and

before the merits of the case were gone into on the hearing of the appeal, the appellant's counsel objected to the order for its uncertainty, and in other respects; and it was proved, and was stated in the case afterwards reserved, that there was no such parish as the parish of *P.*; that the town and county of *Poole* consisted but of one parish, and that the name of that parish was *St. James's in Poole*. The Sessions, however, over-ruled the objection, and proceeded upon the merits; and finally quashed the order, subject to the opinion of this Court upon the following case; in which was also included a statement of the facts above mentioned, relating to the objection to the form of the order. The pauper, *Cotter*, at the age of 12 years, was bound by indenture apprentice as a mariner to *D. S.* of *T.*, ship-owner and coal-merchant. He served his said master for three years, during which he made several voyages, and returned to *T.*; residing there in the intervals between the voyages, sometimes for two months. His last voyage was on board the *Reward* of *T.*, which sailed first to *S.* and from thence to *P.* with a cargo of coals. The pauper remained at *P.* upwards of 40 days, and slept every night during that time on board the said vessel as it lay along-side the quay. He knew whilst he was there that his master was become a bankrupt, and gone from *T.* in consequence of which he applied to Mr. *P.*, the agent and consignee of the vessel, for money, to enable him to return to *T.*, who supplied him with 10*s.* 6*d.* for that purpose. On his arrival at *T.* he resided with his uncle, not being able to find his master, whom he has never seen or served since. The indentures were offered to be given up by one of the assignees of *S.*; but were not, in fact, given up until after they expired. — THE COURT were clearly of opinion against the parish of *St. James* in *P.* upon all the points. As to the 1st, they all agreed, That the residence of the apprentice on board his master's ship in *P.* was not a casual or accidental residence: but he was then in the actual employ and service of his master in his trade and business, which in its nature required a shifting residence. That the principal doubt made in the case of *Rex* v. *Burton Bradstock* (*a*), was, whether the residence of an apprentice on board a ship were equivalent to a residence on shore in the same parish; and what was thrown out by the Court there, in respect of *Bridport* harbour being the home of the ship, was principally in answer to that objection. And that the doctrine of casual residence, as applied to places of public resort, which had been thrown out in the *Scarborough* case, was pretty much shaken in the subsequent case of *Bath Easton*. That at any rate, however, the doctrine did not apply to a case like the present, where the apprentice was in the actual service of his master at the time. And as it was clear that an apprentice might gain a settlement by serving another master in a different parish, by the consent of his original master, *à fortiori* he gained a settlement by serving the original master himself in another parish, where his master's business called him. (*b*) Upon the

St. James's in Poole; there being no other parish in the town and county of *Poole*.

An apprentice to a ship owner living at A, gains a settlement by residing on board his master's ship for 40 days in B, while the ship was staying and trading there in the course of his master's trade and employ upon a coasting voyage. And if the apprentice afterwards, upon the bankruptcy of his master, return to A, where he formerly resided, with his master, at his home, and finding that his master had absconded, live there with a relation, without doing any further service there for his master; such residence, though for more than 40 days before his apprenticeship expired, will not regain him a settlement in A.

(*a*) *Ante*, pl. 525.

(*b*) See the Huntsman's case, Bishop's Latfield *v.* St. Peter's in St. Alban's, *ante*, pl. 395. referred to and commented upon by Lord *Mansfield*, in Alton *v.* Silvetham, *ante*, pl. 400. Also the case of the servant of the Oxford stage-coachman, St. Peter in Oxford *v.* Chipping Wicomb, *ante*, pl. 392. Also the Groom's case, East Ilsley *v.* Weybridge, *ante*, pl. 402.

2d point, it appeared by the case that the apprentice never returned to his master's service in the parish of *T.*, for his master had absconded before his return; but he went to live with his uncle: and it is expressly found that he never saw or served his master afterwards. (*a*) In *Rex* v. *Brighthelmstone* (*b*), the apprentice returned *to his master* again in the original parish. As to the third point, they said there was no objection to the description of the *parish of* P. omitting the mention of its tutelary *Saint*; there being but one parish in the town and county of *Poole*, and *Poole* being the common name of the place. And that the parish-officers of *P.* had themselves considered this description sufficient to call upon them to appeal to the Sessions against the order, by whom the objection to the misnomer had been over-ruled. (*c*) Order of Sessions quashed, and original order confirmed.

(*b*) *Ante*, pl. 529.

An apprentice who went to lodge at his mother's, in an adjoining parish to that of his master, for the purpose of getting cured of a disorder, but who continued to serve his master all the time, by going of errands for him, and attending when wanted, gains a settlement by such service in the parish where he lodged.

532. *Rex* v. *Stratford-upon-Avon*, *E. T.* 49 *G.* 3. 11 *East*, 176. — Removal from *S.* to *Old Stratford*. Order quashed, subject, &c. The pauper was bound apprentice by the parish-officers of *Old Stratford* to *H. H.* of *S.*, cordwainer; and, among other covenants in the indenture, the pauper engaged "faithfully to "serve his master in all lawful business." He lived with his master about 12 months, when his thumb became affected with scrofula, and he left his master and went to his mother's, in the adjoining parish of *Old Stratford*, to have his thumb cured, where he continued till the time his master went away from *S.*, which was about two months afterwards. He slept at his mother's house more than 40 days, and he never afterwards slept in *S.*, nor in any other place for 40 days during the continuance of his apprenticeship. During the whole time he so slept at his mother's he went almost every day to his master's, and was on some days employed for three or four hours in each day by his master in going of errands, and was always ready at his master's house whenever wanted by him, but was unable to work at his trade in consequence of the complaint in his thumb. — In support of the order of Sessions, it was contended that no settlement was gained in *Old Stratford*, the pauper's residence there being casual, on account of sickness, and not a residence under the indenture, and the cases of *Rex* v. *Titchfield* (*d*), *Rex* v. *Sutton* (*e*), *Rex* v. *Barmby-in-the-Marsh* (*g*), were cited. — LORD ELLENBOROUGH C. J. The facts stated leave no doubt that there was a service of the master by the apprentice while he lodged at his mother's in the adjoining parish. He went to lodge there, indeed, in order to get cured, in consequence of an arrangement between the master and the mother; but he continued to serve his master every day; and though he could not work at the trade himself, yet he performed other service, and he might attend the work and learn the trade of his master; he must, therefore, be considered as still in the service of his master as an apprentice while he lodged with his mother. If the mother had lived more remote from the master's house, so that he could not have served his master while he resided at his mother's for the purpose of cure, that would have altered the case, and likened it to *Rex* v. *Barm-*

(*d*) *Post*, pl. 548.
(*e*) *Ante*, pl. 461.
(*g*) *Ante*, pl. 530.

(*a*) *Vide* Rex *v.* Barmby-in-the-Marsh, *ante*, pl. 530.
(*c*) *Vide* Rex *v.* Madley; *post*, pl. 800. Rex *v.* Andover, *post*, pl. 801. Rex *v.* Ulverstone, *post*, pl. 865. and Rex *v.* Harrow on the Hill, *post*, pl. 933.

by-in-the-Marsh: there there was no service of the master; but here the service to the master continued, and therefore the apprentice gained a settlement by the last 40 days' residence in the parish where he lodged with his mother. — GROSE J. There is no pretence for saying that the apprentice was serving any other person than his master, and the case shows that he was serving him during the time he lodged at his mother's. If the Sessions had considered that there was any fraud in the master's sending him to his mother's, they would have stated it. But though the boy went to his mother's for the purpose of having his thumb cured, yet he continued to serve his master every day; and then, according to all the cases, he gained a settlement by such service in the parish where he lodged. — LE BLANC J. The question is, Whether, during the last 40 days that the boy lodged at his mother's, he was resident there *as an apprentice*? and the facts stated put an end to the argument; for it is found that during all that time he was serving his master; not, indeed, to the full extent of the service required by the indenture, but to the full extent of his ability to perform it. In the other cases, where it has been held that the apprentice gained no settlement while resident in a different parish from the master's, for the purpose of cure, he was not serving his master during such residence. But while an apprentice continues serving under the indenture, all the cases agree that his settlement is in the parish where he lodges, and not in that where the service is performed. Here he was serving his master all the time, and I cannot say that the service was not of such a nature as was proper for an apprentice. — BAYLEY J. was of the same opinion. — Order of Sessions quashed.

533. *Rex* v. *Smarsden*, *E. T.* 51 *G.* 3. 13 *East*, 452. — Removal from *G. C.* to *S.* Order confirmed, subject, &c. In 1795, the pauper was bound by indenture to *J. G.*, shoemaker of *S.*, to serve him for seven years. The pauper lived with and served his master at *S.* till within four months of the expiration of the term for which he was bound, when his master made an agreement with one *O.*, of *H.*, shoemaker, that the pauper should go to work for him, *O.*, at *H.*, during the remainder of his apprenticeship, on certain terms. This agreement was made entirely by the master, without consulting the apprentice. The pauper accordingly went to work, and continued with *O.*, in *H.*, till within three weeks of the end of his apprenticeship; boarding and sleeping at *O.*'s house in *H.* during the whole of the time. At this period, as the pauper was told by *O.*, the parish-officer of *H.* called on *O.*, and in consequence of a conversation between the officer and *O.*, which was not heard by the pauper, *O.* told the pauper that he did not wish to affront the parish, and that he (the pauper) must leave him and seek work elsewhere. The pauper left *O.* on that day, and went to *S.*, where he slept, but did not return to his old master, nor had he any intention of doing so, as he had not used him well, and he knew he had no work to employ him upon. His old master did not see the pauper on the night of his sleeping at *S.*, nor did it appear that he was acquainted with the circumstance of the pauper being there. The pauper went the following day to *G. C.*, where he continued to work for his own maintenance until the expiration of the term of his apprenticeship; when that day arrived, he returned to *S.*, and his master and he

An apprentice, after serving most of his time with his master in S., obtains a subsequent settlement in H., by serving another master there for 40 days, by the direction of his first master, and being then dismissed by his second master, he (the apprentice), unknown to his first master, and without any intention of returning into his service again, lodged for one night in the same parish of S., and then went and worked in a third parish, for a month, till

the expiration of his term: Held, that the settlement was not brought back to S. by such *casual* lodging of the apprentice there.

went together to the person in whose hands the indentures of apprenticeship were by joint consent deposited, and from that person, with the master's consent, he received the indenture and took it away. — *Gurney*, in support of the orders, cited *Rex* v. *Brighton* (*a*), and said the want of knowledge of the fact by the master of the boy's sleeping in *S.*, could not make any difference. — LORD ELLENBOROUGH C. J. This is the case of an apprentice bound for seven years, who having served out all but four months of his time with his master in the parish of *S.*, was let out to work for another person in *H.*, by his original master, on certain terms. Having resided in *H.* for three months with the second master, he was dismissed by the interference of the parish officers; whereupon the apprentice returned to *S.* for one night, but not to his first master, nor into his service, nor having any intention to do so, but merely to get a bed there, as he would have done any where else. Then, can this be called a returning into the service of his first master, who was even ignorant of the fact of the pauper's being there? But it is said that the master afterwards recognized the continuance of the relation between them at that time, by going with the pauper, when the term of apprenticeship expired, to take up the indenture: but how can that vary the question, Whether the pauper returned into his service on the night when he slept in *S.*, against the conclusion to be drawn from all other facts of the case? There being no residence of the pauper in *S.* under the indenture for any part of the last 40 days of the apprenticeship, except by the coupling the night when he slept there on his return from *H.*, with his previous residence in *S.*; and that having been a mere casual residence, and not under the indenture, the settlement which he had acquired in *H.* by 40 days' residence there, under the agreement made by his master, still continued there, and, consequently, the orders must be quashed. — GROSE and BAYLEY J. (LE BLANC J. being absent,) concurred; and BAYLEY J. said, that the last lodging of the pauper in *S.* was not a lodging there under the indenture.

(*a*) *Ante*, pl. 529.

Where an apprentice who worked and slept at his masters' works in C., at weekly wages, went, with their knowledge, on *Saturdays* and *Sundays* to R., and slept there, and returned to his work on *Mondays*, and was received by them, and on the *Saturday* afternoon before *Shrove Tuesday* (having the night before slept at C.), received his pay

534. *Rex* v. *Ribchester*, *M. T.* 56 *G.* 3. 2 *M.* & *S.* 135. — Removal from *R.* to *C.* Order quashed, subject, &c. — The pauper was bound apprentice by indenture in 1790, to Messrs. *P.* and Co. for six years, who covenanted (*inter alia*) to pay the pauper 6*s.* weekly during the term. These indentures were proved to have been executed by the pauper and his mother, but no evidence was given of their execution by *P.* and Co. The pauper (after two years' service at *R.*,) went to work for his master at *C.*, and accordingly worked for his masters at *C.*, and slept there except on *Saturday* and *Sunday* nights, when he went to sleep in *R.*, and returned on the *Monday*. Eleven other apprentices left the works at *C.* on *Saturday* and returned on *Monday*, which the masters *P.* and Co. knew, and it was the usual custom for the apprentices to do so. The pauper continued to work and sleep in this manner for two years and a quarter, until the *Saturday* before *Shrove Tuesday* 1795, when he received his pay, and never returned again to the service of his masters: having on the night before this *Saturday* slept in the works at *C.* The pauper when asked, whether, when he quitted the works on the said *Saturday*, he had determined not to return again, said he could not say that he did determine not to

, but that it seemed he did not return. When asked whether itting Messrs. *P.*'s works in *C.*, for the last time on the *day* afternoon, he had formed any intention not to return, he red that he had not; being asked the said question as to y, he made the same answer; and further said, that he could t upon any particular point of time when he determined not urn. The pauper slept in *R.* on the *Saturday* night, and for hole of the succeeding week, and then hired himself into er employment.— It was contended in support of the order of ns, that as the pauper had formed no intention of quitting rvice when he left *C.* on the *Saturday*, he continued in the e under the indentures up to the *Monday* morning, when he ly left it; and therefore his sleeping at *R.* on the *Saturday* was under the indentures; and cited *R.* v. *Stratford-upon-* (*a*), *R.* v. *Undermilbeck.* (*b*). — LORD ELLENBOROUH C. J. s a case in which there was not any express leave of absence by the masters, but they had been in the habit of receiving their apprentices after they had gone home and returned, y so receiving them they showed that it was not their pur- o renounce them on that account. In pursuance of this gence the pauper went as usual on *Saturday* night, and it not appear what his intention was at that time, or that he had d any upon the subject of returning or going away. He did however, return on the *Monday*; the end and conclusion, fore, gives a character and denomination to the original act parture, *finis nomen operi imponit.* From what was finally we must collect what was his determination when he first away on the *Saturday*. We find that he did not return, and e did not on this occasion, as formerly, avail himself of the ce from *Saturday* to *Monday* as an indulgence. In *Rex* v. *ford-upon-Avon* the apprentice continued to perform a species vice with his master while he lodged with his mother, which circumstance to cover what might otherwise have been an ption of the service; it was, therefore, held that he gained a ment where he lodged. But here it appears that the ap- ice, by not returning to his service on the *Monday*, had not on the *Saturday* under the usual indulgence; and, therefore, ust be considered as having broken the contract on the *day* when he had quitted his masters' works; and con- tly *Friday* night was the last night of his residence as an ap- ice. The settlement, therefore, was at *C.*, where he slept on ight, and not at *R.* — LE BLANC J. There is one question has very properly not been touched upon in the argument. stated that no evidence was given of the indentures having executed by the master. But it appears that they were ex- d by the pauper, and that is binding. Upon the point made e argument, one cannot, perhaps, but lament that it should have been determined that an apprentice serving another n, with the leave of his original master, in another parish, d gain a settlement in that parish. The Court, however, do ish to disturb those cases. The question here is, Whether was any residence under the indentures of apprenticeship the *Saturday*, when the pauper left his masters' service, and afterwards returned? Without being obliged to have re-

and never returned again to the service, and slept that and the following night at R., but on quitting the works on *Saturday* had not formed any intention not to return, nor had he on the *Sunday*, nor could he fix the time when he determined not to return: Held, that his settlement was at C., his service having ended on his quitting on *Saturday*.

(*a*) *Ante*, pl. 532.

(*b*) *Ante*, pl. 409.

course to any difficult inquiry into the operations of his mind, the necessity of doing which is much against the argument used, we have here one clear line of fact respecting this apprentice which cannot deceive, *viz.* that when he left the service on the *Saturday* he received his wages up to that time, and after that time he never received any more. It appears, therefore, that he was not in the service of his master after quitting his service on the *Saturday*. — BAYLEY J. I am of the same opinion. It is impossible to say that this apprentice was serving under the indentures of apprenticeship after the afternoon of the *Saturday*, when he received his pay, and never afterwards returned. The Court cannot look to what was passing in the mind of the apprentice, but to his acts. From the nature of the service he was only employed locally at the manufactory during the ordinary working days; but from *Saturday* to *Monday* he was free from his master. If, then, he was to have that interval entirely to himself, and never returned after its expiration, at what time did he leave his masters' service? It must be taken that he left it at the time that interval commenced, for he was not in a condition to do any act of service for his master after the *Saturday* afternoon. — DAMPIER J. I am of the same opinion. The case of *Rex* v. *Undermilbeck* (*a*), cited in argument, is the only case like the present; but in that case the master recognised the departure of the servant; for he paid him his wages for the time of his absence. That, therefore, affords a distinction. Here the apprentice was at weekly wages, and was paid on the *Saturday*; and the *Friday* night was the last night of his being in the actual service of his master under the indentures; and the only question is, Whether there was a constructive service, which was to go on during the *Saturday* and *Sunday*? It seems to me, that the circumstance of the apprentice not having returned on the *Monday*, shows the time when the service determined, namely, on the *Saturday*, when he received his last wages; although if he had returned, the masters by receiving him again would have recognised him as their apprentice during the period of his being absent. — Order of Sessions quashed.

(*a*) *Ante*, pl. 409.

Where a master mariner, having no immediate occasion for his apprentice's service, the vessel being then in dock, offered either to turn him over to another master for a time, or let him go back to school, and the apprentice said he would go back to school and learn navigation; and, accordingly, did so; and resided above 40 days

535. *Rex* v. *St. Mary Bredin* in *Canterbury*, (*b*) *H. T. 52 G. 3.* 2 *B. & A.* 382. — Removal from *W.* to *St. Mary Bredin*. — Order confirmed, subject, &c. — The pauper was bound by indentures, dated in *October* 1807, to *J. H.* ship-master, for five five years. The premium paid was 40*l.*, and the pauper was to receive from *H.* 8*l.* wages for each year's service. He made three voyages; the ship then wanted repair, and was laid up in *Shadwell* dock. When the ship went into dock, the pauper slept at his master's house, in the parish of *St. Mathew, Bethnal Green*. After he had been there some time, his master told him, that he had not then any employment for him, and asked him if he would like to be turned over to another master, or to go back to school at *C.* till the ship was ready. The pauper said, that he would rather go back to school and learn navigation. He accordingly went to *C.*, to his guardian (his parents being dead), and was told by his guardian to go to Mr. *Q.*'s school, where the pauper had formerly been educated. He accordingly went to Mr. *Q.*'s school, which is in the parish of *St. M. B.* in *C.*, where he staid and slept for nearly 12 months, and then run away, and never returned either

(*b*) And see Rex *v.* Ilkeston, *post*, pl. 538.

to the school, or to his master, *J. H.* The master did not agree to pay, nor in fact did he pay any part of the expence of the pauper's board or schooling, or of the wages after the pauper had left *B. G.*, but the whole of the expence was defrayed by the pauper's guardian, out of money which had been left to the pauper. At the time when the pauper run away from *Q.*'s school, about one year and a half of the term of five years, which he was by indenture bound to serve the said *J. H.*, remained unexpired. — BAYLEY J. This is a case new in its circumstances, and we are called upon now to lay down a rule which is to govern in future. It has been truly stated, that the words of the statute are only "*such binding and inhabitation.*" But I apprehend that the service of the apprentice is one of the essential requisites to confer a settlement of this sort. This service must either actually or constructively be going on during the absence of the apprentice from his master; and the cases say, that where that absence is occasioned by illness, which negatives the existence of such service, no settlement is gained by such a residence. Now there is no continuation of the service here during the residence of the boy at *C.* It is not, indeed, necessary that the service should continue with the same master, but some service must be going on during all the time. The offer here is, either to turn the apprentice over to another master, or to permit him to go to school, and the lad accepted the offer, and said, "I will go to school and learn navigation." Now had the master any control over the apprentice during all that period? The case is like that of a master who allows his apprentice to return to his friends, having no occasion for his service. That is a suspension of the apprenticeship for the time, and no settlement can be gained by such residence. Here the service did not continue while the apprentice was at school; and, therefore, I am of opinion that no settlement was gained in this case. — HOLROYD J. The service did not continue while the apprentice was at school; but there was a relinquishment of it by the master during all that time, and until he should have occasion for him again. No settlement was therefore gained by the residence in *C.* BEST J. concurred. — Order of Sessions quashed.

there: Held, that such residence was not a residence under the indentures, and that he did not thereby gain a settlement.

536. *Rex* v. *Chelmsford, H. T.* 60 *G.* 3. & 1 *G.* 4. 3 *B.* & *A.* 411. Two justices, removed *E. S.*, and *A.*, his wife, and their two children, from *B.* to *C.* The Sessions, on appeal, confirmed the order, subject, &c. The pauper, on the 15th *December* 1814, when he was 14 years and six months old, was bound as a parish apprentice, by indenture, to *S.*, of the parish of *H.*, to learn the art of a cordwainer, and to serve him until the pauper should attain the age of 21. The pauper served the first four years of his time in the parish of *H.*, when the master and the pauper went to and resided in the parish of *C.*, and the pauper served his master there, under the indenture, for the period of nearly an year. In the year 1809, when about two years of the apprenticeship were unexpired, the master and apprentice having been appointed on the permanent staff of the fourth regiment of *E.* local militia, of which the head-quarters were at *B.*, went from *C.* to *B.* to reside there. The master had been appointed a serjeant; and the apprentice, a drummer, served the master, and inhabited 40 days in the parish of *B.* The pauper received his soldier's pay, whilst working for his master

A parish apprentice and his master being both on the permanent staff of the local militia, in consequence of that circumstance, resided together with his master, and continued to serve him in the parish of B for 40 days: it was held, that this residence was sufficient, and that he thereby acquired a settlement in B., notwithstanding they were

both under the control of their superior officers during the whole time.

at *B.*, but not full wages; and the master refused to give up the indentures, till the expiration of the term expressed therein. The Court were of opinion, that the military duties, to which the apprentice was liable, on the permanent staff of the local militia, rendered him not *sui juris*, and prevented his gaining a settlement by the service and inhabitancy in the parish of *B.*—ABBOTT C. J. In this case, I am of opinion, that the pauper gained a settlement by his residence in *B.* It is not necessary for the Court to consider what would have been the effect, if the residence had been separate from that of his master, in consequence of his being in the local militia. Here he continued to reside in the same place with his master, and continued to serve him during the whole period. That is expressly stated as a fact by the Sessions; and it is not impossible, that during a great part of the time, he might be actually serving his master. It is not necessary that the party should reside in a place, because he is an apprentice, so as to give him a settlement there; for *Rex* v. *Stratford on Avon* (*a*) is a distinct authority to the contrary. I am, therefore, of opinion, that the order of Sessions ought to be quashed.—BAYLEY J. The best rule for us is to abide by the words of the statute 3 & 4 *W.* & *M. c.* 11. Those words are, that if any person shall be bound an apprentice, and inhabit in any town, such binding and inhabitation shall be adjudged a good settlement. Now here there was a valid binding, and the pauper resided in *B.* for 40 days, where his master was at the time, and continued to do acts of service whilst he was so resident. His residence, therefore, was not wholly foreign to the purposes of the indenture, and was sufficient to confer a settlement.—HOLROYD J. I am of the same opinion. The pauper gained a settlement in *B.* by his residence there. I see nothing in the case to show that his obligation to serve under the indenture was put an end to. It appears to me, that his service might lawfully continue; and, in point of fact, it did so continue during all the time. It is said, that the ground for his residence in *B.*, was, because he was a soldier; and so, in the case of *Rex* v. *Stratford on Avon*, the residence of the apprentice was in order that he might be cured of a sickness. Yet, inasmuch as it appeared there, that he continued to do acts of service for his master, notwithstanding his sickness, it was held, that the residence was sufficient to confer a settlement. That case seems to me to govern the present; and I am, therefore, of opinion, that the order of Sessions ought to be quashed.—Order of Sessions quashed.

(*a*) *Ante*, pl. 532.

By an indenture of apprenticeship it was stipulated, that the master should provide meat, &c., during the term, except in the winter seasons, when the ship to which the apprentice belonged should

537. *Rex* v. *Brotton* (*b*), *M. T.* 1 *G.* 4. 4 *B.* & *A.* 84. Upon appeal against an order by which *M.*, his wife, and two children, were removed from the township of *W.* to *B.*, the Sessions confirmed the order, subject, &c. The pauper, *M.*, was bound apprentice for the term of four years, by indenture, bearing date the 11th of *March* 1813, and made between *M.* the elder, and *M.* the younger, of the one part, and one *B.*, master-mariner and shipowner, of the other part. In which indenture it was provided, amongst other things, that the said master should find and provide for his said apprentice sufficient meat, drink, washing and lodging, during the said term, *except in the winter seasons, when the ship to which he should belong should be laid by unrigged,*

(*b*) See Rex v. Ilkeston, *post*, pl. 538.

during which time it was agreed, that the said apprentice should maintain himself, or be maintained by his friends; and in lieu and satisfaction thereof, the said master should pay him, the said apprentice, the sum of 6*s.* a week, weekly and every week, during such time as the said apprentice should not be maintained by his said master; and that the said master should pay, or cause to be paid, unto the said apprentice, as and for wages for such his service, the sum of 75*l.*, in manner following; (that is to say,) 12*l.* for the first year; 16*l.* for the second year; 20*l.* for the third year; and 27*l.* for the fourth year; also 12*s.* a year for washing. The said pauper, while the ship was laid up at *W.*, in which he served his said master as an apprentice, during the apprenticeship, resided, occasionally, during the winter, with his parents, in *B*; and in the whole, for considerably more than 40 days; and he slept the last night, during the continuance of the apprenticeship, at *B.* *B.* is 20 miles distance from *W.*, and the pauper did not do any work for his master while he resided there, but was liable to have been recalled by his master at any time, if he had been wanted at the ship. The Sessions were of opinion, that by this residence at *B.* a settlement was gained. — ABBOTT C. J. This appears to me to be a stronger case than the one which has been cited, and that on the very ground on which it has been attempted to be distinguished from it. Here there was a distinct stipulation in the indenture, by which the master dispensed with the service of his apprentice, during the winter season, the period when this residence at *B.* took place. The residence, therefore, is not at all connected with a service; but is, by the very words of the indenture, disconnected from it. Then the case cited is an express authority to show, that an apprentice, by such a residence, does not acquire a settlement. The order of Sessions, must, therefore, be quashed. — Order of Sessions quashed.

be laid by unrigged; during which time the apprentice was to be maintained by himself or friends, the master paying a compensation. Under this stipulation, the apprentice, during the winter, resided with his parents, in the township of B., for more than 40 days, not doing any work for his master during such residence: Held, that this was not a residence under the indenture, and conferred no settlement.

538. *Rex* v. *Ilkeston*, *E. T.* 6 *G.* 4. 4 *B.* & *C.* 64. — The pauper, *W.* was removed from *R.* to *I.* The Sessions on appeal confirmed the order, subject, &c. *J. W.* the pauper's husband was bound apprentice by indenture dated 22d of *December* 1818; for the term of seven years to *R.* a boat-builder, an inhabitant of *I.* During the first two years of his apprenticeship, the pauper's husband lodged with his father in the parish of *R.*, serving his master in *I.* Afterwards, he lodged and worked with his master in *I.*, but regularly, and with the knowledge and consent of his master, went to his father's at *R.*, on the *Saturday* night, and slept there on the *Saturday* and *Sunday* nights, and returned to his master at *I.*, on the *Monday* morning. On the *Saturday* before the *N.* fair, in the month of *October* 1822, the pauper's husband went to his father's as usual, and slept there on the *Saturday* and *Sunday* nights, and returned to his master's on the *Monday*, and worked for him that day, and in the evening asked and obtained his master's permission to go home again, for the purpose of being at the fair at *N.*, on the following day. He left his master that evening accordingly, and never returned, having enlisted for a soldier a few days afterwards. The pauper's husband did no work for his master in *R.*, on the *Saturday* night and *Sunday*, nor at any other time, when he was at his father's. The indentures were retained by the master, till

An apprentice who lived and worked with his master in the parish of I., went home to his father's, in the parish of R., every *Saturday*, and slept there every *Saturday* and *Sunday* night (with his master's leave), and returned to work on *Monday* morning. The apprentice having returned and worked as usual, on a *Monday* left his master in the evening, and never returned: Held, that the

sleeping in R., being merely by way of indulgence, and not for the purposes of the apprenticeship, was not sufficient to confer a settlement.

applied for some days after the pauper had enlisted, when he gave them up. — ABBOTT C. J. I am of opinion, that the pauper did not gain a settlement in *R.*, the place of his father's residence, at which he slept on *Saturday* and *Sunday* nights, but at *I.* the place of his master's residence, where he slept the other five nights in each week. The words of 3 *W.* & *M. c.* 11. *s.* 8. are "If any person shall be bound an apprentice by indenture, and "inhabit in any town or parish, such binding and inhabitation "shall be adjudged a good settlement." The true construction of that provision appears to be, that the inhabitation must be in the character of an apprentice, and in some way or other in furtherance of the object of the apprenticeship. An inhabitation by indulgence, then, is not within the statute. The case before us states, that the pauper worked and lodged with his master in *I.*, but with the consent of his master went on *Saturday* night to his father's at *R.*, and spent *Sunday* with him, and returned to his work on *Monday* morning; that certainly was a residence in *R.* by indulgence only. There may indeed be cases, and some such have arisen, where an inhabitation in a parish different from that in which the master resides, may be in furtherance of the service; for instance, where a master cannot take an apprentice into his own house, and appoints or allows him to choose a residence in another parish, so that he may return to his work every morning. But the facts of this case show that the sleeping in *R.* was merely for recreation, and had no connexion with the service. The apprentice did not, therefore, gain any settlement in that parish, and the order of the Sessions was right. — BAYLEY J. Where the master appoints no place for the pauper to sleep, or appoints a place out of the parish where the service is performed, I agree that a settlement is gained in the parish where the apprentice sleeps, and that was the ground on which *Rex* v. *Castleton* (*a*), & *Rex* v. *Stratford-upon-Avon* (*b*), proceeded. *Le Blanc* J. expressly put the latter case on the ground that the pauper slept in *O. S.* as an apprentice. But if an apprentice in general resides with his master, and is allowed once a week, as an indulgence, to visit his parents in another parish, he does not lodge there as an apprentice, and I cannot see that the case is varied, whether the indulgence be for days or months. If so, this case is decided by *Rex* v. *St. Mary Bredin* (*c*), & *Rex* v. *Brotton* (*d*). — HOLROYD J. concurred. — Order of Sessions confirmed.

(*a*) *Ante*, pl. 526.
(*b*) *Ante*, pl. 532.
(*c*) *Ante*, pl. 535.
(*d*) *Ante*, pl. 587.

IV. *Of discharging the Indentures.*

The bankruptcy of the master of an apprentice does not discharge the indentures; although the master absconded, and afterwards delivered the indentures to the person

539. *Buckington* v. *Shepton Bechamp*, *E. T.* 10 *G.* 1. *MSS.* — *A.* was bound an apprentice at twelve years of age to *C.* of *B.*, where he served and inhabited with his master for two years. Soon afterwards *C.* became a bankrupt, upon which *A.*, without the direction or consent of *C.*, hired himself as a servant for a year to *G.* of *S. B.*, and served him accordingly in the said parish for two years. During this service in *S. B.* the term of his apprenticeship expired, and *C.* delivered up the indenture to his master *G.* — THE COURT were unanimously of opinion, that *A.* gained no settlement by his service in *S. B.*; for the bankruptcy of the master did not discharge the apprentice from his indentures,

and, therefore, not being *sui juris*, he could not hire himself without his master's consent. The contract with *G.* was unlawful; he was not in a capacity to be hired as a servant, and could not gain a settlement in the parish of *S. B.*; but his settlement is in the parish of *B.*, where he lived and served his master under the indentures 40 days. (*a*)

whom the apprentice had hired himself as a yearly servant. S. C. Sett. and Rem. 117. pl. 155. See Rex v.

Ld. Ray. 1352. Str. 582. 1 Sess. Cas. 278. 8 Mod. 235. Fort. 321. Foley, 229. Austrey, *post*, pl 542.

540. *Rex* v. *St. Mary Kallendar, T. T.* 21 & 22 *G.* 2. *Burr. S. C.* 274. — *M.* was bound by indenture an apprentice for seven years, to *G.* of *St. M.*'s, and, under that indenture, lived with *G.*, and served him in *St. M.* for five years. At the end of the five years he left his master, and the indentures were exchanged between the master and the apprentice's father, by consent of the apprentice. About one year afterwards the father contracted with *S.* of *T.* for binding the said *M.* apprentice to him for four years; and *M.* went to *S.* on trial, and lived with him in *T.* for one year and three quarters; but no indenture was executed, nor any other agreement made. During the time *M.* lived with *S.*, *G.*, his former master, lived within four miles of *T.*, and knew of his being in *S.*'s service. But no other proof was made that *G.* consented to the agreement between *M.*'s father and *S.* — THE COURT: There can be no ground to consider this as a settlement at *T.*, but upon supposing the first indentures to have subsisted, and that the service at *T.* was under them. But that could not be, because the exchange of the indentures certainly amounted, either in law or equity, (and they are the same thing in this case,) to a cancelling of them, and a determination of the apprenticeship under them. Besides, there is no consent of the original master; but the contrary is apparent. His knowledge of the fact does not at all imply his consent to the transaction. The apprentice's living at *T.* was not under, but contrary to the first indenture; it was in consequence of a fresh agreement, and for a new term.

If indentures be exchanged between the master and the apprentice's father, with the consent of the apprentice, the indentures are thereby virtually cancelled. S. C. vol. i. pl. 633.

541. *Rex* v. *Eakring, E. T.* 26 *G.* 2. *Burr. S. C.* 320. — *W.*, a poor child of *E.*, was put out by the proper officers, by indentures regularly executed, and allowed by two justices of peace, to *T.* of *E.*, to serve him as a parish apprentice till he should accomplish his age of 20 years, and he served his master under these indentures for several years at *E.* About three years before he attained 20 years of age, he ran away from his master, and loitered, for some time, about the country. In *June* 1749, *Tomlinson*, the master, died; and, at the *Martinmas* after, *W.* hired himself as a servant to *F.* of *S.*, for a year, and served him that year at *S.*; and at *Martinmas* 1750, hired himself for another year, and served that year also with *F.* at *S.*; and received all his wages to his own use, the executors of *T.* taking no notice of him: but he did not attain his age of 20 years till *January* 1750. It was contended, that after the master's death the apprentice was at liberty to hire

An apprentice may gain a settlement by being hired for and serving a year, subsequent to the death of his master; for by the master's death the indentures are discharged. S. C. vol. I. pl. 697.

(*a*) It does not clearly appear in any of the reports of this case, whether the indentures were delivered up before or after the expiration of the apprenticeship; but in S. C. Ld. Ray. 1852. it is said, "the master's delivering up the "indenture afterwards, if it should be "looked on as a *subsequent consent*, "will not make his letting himself "good, so as to gain a settlement in "*Shepton Bechamp*, by *hiring and ser-*"*vice* with *Joshua Glover*." See also S. C. 1 Sess. Cas. 278. Fort. 321.

himself; and as he was hired for a year, and had served a year in *S.*, his legal settlement was there. Apprenticeship is a personal trust between the master and servant, and is determined by the death of either master or apprentice. — And THE COURT was of the same opinion.

Parish indentures cannot be discharged by an *infant apprentice*, for his consent for that purpose is of no validity.

542. *Rex* v. *Austrey*, *H. T.* 31 *G.* 2. *Burr. S. C.* 441. — *O.*, a poor child above 10 years of age, being bound by indenture by the parish-officers of *G.*, pursuant to the 43 *Eliz. c.* 2. § 5., served and inhabited with his master in *G.*, under the indenture, which was dated in *April* 1744, until *Michaelmas* 1754, at which time his master, in consideration of 40 shillings then paid him by the pauper, agreed to discharge the pauper from his apprenticeship; which receipt and discharge were written by the master on the back of the indentures, which he then delivered up to his apprentice. — THE COURT were clearly of opinion, that as it appeared by the order that he must have been under age at the time of his consenting to his discharge, that the indentures were not thereby vacated; for the consent of an *infant apprentice* can signify nothing, nor be of any validity.

Indentures mutually *given up* by the master and the apprentice, are thereby virtually *cancelled*.

543. *Rex* v. *Titchfield*, *M. T.* 4 *G.* 3. *Burr. S. C.* 511. — *W.* bound himself an apprentice by indenture, dated the 24th day of *March* 1761, for three years to *F.*, master and mariner, and inhabited above 40 days with his master in *M.*; but falling sick, he on account thereof, and with the consent of his master, went to his father in the parish of *B.*, and there continued 40 days, and was sick at that time, and to the time the order was made. On his going to his father the indentures were mutually given up, but not cancelled. — THE COURT were unanimously of opinion, that an inhabitancy by reason of sickness shall not gain a settlement; for suppose a servant break his leg in a strange parish, and cannot be moved within 40 days, shall that gain a settlement there? and there is no difference between the indenture being *given up* and its being *cancelled*; they amount to the same thing.

A parish-apprentice bound out until he shall attain the age of 24, may, after he has attained the age of 21, *cancel* the indentures, with the consent of his master, and without the consent of the parish-officers.

S. C. Blac. Rep. 592. See the case of Rex *v.* Langham, *post*, pl. 569.

544. *Rex* v. *Ecclesal Bierlow*, *E. T.* 6 *G.* 3. *Burr. S. C.* 562. — The pauper, being 16 years of age, was bound out, by the parish, an apprentice to *A.*, a cutler, and an inhabitant of the township of *E.*, for the term of eight years. He resided there, under that indenture, upwards of five years. After he had attained the age of 21 years, he and his master came to an agreement together to cancel the indentures of apprenticeship: and thereupon the master delivered up the indentures to the pauper to be cancelled; and the same were accordingly cancelled. Afterwards the pauper was hired for a year to *M.* of *W.*, and served for a year in *W.* in pursuance of such hiring, and received his whole year's wages. — LORD MANSFIELD: There seems to be no necessity of the parish-officers joining in the consent to discharge this apprentice. There is no authority for it; and I see no inconvenience to the parish, or to any one else, in its being done without their concurrence. The act of parliament empowers them to bind the man-child out apprentice till he come to the age of 24. And the act of parliament was necessary to make valid the binding of the male parish-apprentice till his age of 24; for he could not be bound longer than till 21 without the aid of the act; and two justices of the peace are to assent to this. But the same reason does not hold as to the discharge of the apprentice; this concerns the master and the apprentice only. The latter part of the apprentice's

ne is of most service to the master. Therefore, the apprentice ing of age, if the master and he agree to it, they two may solve the contract. — WILMOT J. If, after he is of full age, the ster and he agree to it, the indentures may be cancelled without e consent of the parish-officers; and if so, then this person was *juris* when he hired himself at *W.*, and consequently he gained ettlement there by hiring for a year and a service for a year. YATES and ASTON Js. were of the same opinion.

545. Rex v. *Weddington, E. T.* 14 *G.* 3. *Burr. S. C.* 766. — *L.*, ing of the age of eight years and a half, bound himself apprentice indenture, with his father's consent, who was a party to the lenture, to *M.* of *C.*, for seven years: and served him in the id parish under the indenture one year and a half; and then e indenture was destroyed by consent of the master, the father, d the apprentice. The pauper within half a year afterwards, und himself apprentice by indenture, with his father's consent, *M.* of the parish of *B*, for seven years, and served him in *B.*, der the last-mentioned indenture, four years; and then this lenture was destroyed by consent of the master, the father, and e apprentice. The pauper, after this, returned into the parish *C.*, and bound himself apprentice, by indenture, to one *Shaw* the parish of *C.*, for two years, and duly served him in the me parish, under the last mentioned indenture, the whole of e said two years. The pauper, in about three years next after e expiration of his said apprenticeship to *Shaw*, hired himself r a year to *Smith*, of *C.*, and duly served him there for year under the said hiring. — LORD MANSFIELD: The gle question is, Whether the indenture of apprenticeship in *B.* s void or not, there having been a former indenture; and such rmer indenture having been cancelled by agreement between e master, the father, and the apprentice? The case of *Aus-* by (*a*), though very correctly, I believe, reported, might pro- bly mislead the justices, by their not attending to the circum- tances of the particular case, to which the general words there de use of were to be applied: they seem to have understood em in their absolute and general sense, without considering their rticular application to the case then under consideration; which s the case of *a parish-apprentice*, where the parish and the blic are interested. The child was legally bound out by the rish-officers till he should be 24 years of age, and the indenture s duly approved by two justices. The master, in consider- ion of 40*s.* paid to him by the apprentice, agreed to discharge m, and delivered up the indenture to the apprentice. The estion was, Whether the parish-officers, who bound him out der a special authority, ought not to have been consulted about scharging him, and to have given their consent to it. The ole policy of the 43d of *Eliz.* (*b*) might be defeated, if the ster and parish-infant apprentice could by their joint consent ne, without the consent of the parish-officers, discharge such ontract, and set the apprentice free from it. Such a construction uld evade and invalidate this law. That case, therefore, is not plicable to the present. Here the original contract was only tween the father, the master, and the apprentice; and all of em consent to the discharge. An infant may make his condition tter, though he cannot make it worse. The reason why an

The indentures of an infant apprentice may be discharged with the consent of his father and his master.

S. P. Rex *v.* Spaunton, Burr. S. C. 801.

(*a*) *Ante*, pl. 542.

(*b*) *Vide* 43 Eliz. c. 2. § 5.

infant may bind himself apprentice is, because it is for his benefit. If he was discharged of the former indenture he was at liberty to execute another. The case of *St. Mary Kallendar's* (*a*) is in point: I see no distinction that can be made between it and the present case. The indentures were exchanged between the father and the master, by consent of the apprentice, who was clearly then under age; and Lord Chief Justice *Lee* says, The indentures did not subsist, because the exchange of the indentures amounted to a cancelling of them, and a determination of the apprenticeship under them.

(*a*) *Ante*, pl. 540.

To vacate the indentures of an *infant parish apprentice* it is necessary to obtain the consent, not only of the master but of the two justices and the parish-officers.

546. *Rex* v. *Langham*, *M. T.* 22 *G.* 3. *Cald.* 126.—The pauper was bound apprentice, by indenture of the 18th of *March* 1773, duly executed and allowed by two justices, to *S.*, of *L.*, from the churchwardens and overseers of the poor of the *D.*, in the parish of *O.*, to serve till the age of 24 years; under which indenture he remained in such service four years and upwards, when *S.*, his master, failed in his circumstances, and having no longer employment for him, told him he might go to his father, *E.*, at *O.* Upon the apprentice going home, his father and grandfather applied to one *B.* of *D.*, to take him for the remainder of the term. The father then went to *S.*, who was at home, and under confinement, and told his wife, that he, the father, had got a new master for his son; upon which *S.*'s wife went up to her husband's chamber, and informed him that the father of the apprentice was come, and said to her that he had got a new master for his son, and desired the indenture might be given up; upon which *S.* gave the indenture to his wife, who delivered it up to the apprentice's father, *S.* having first made crosses upon the indenture, as a token that he had resigned up the indenture and the apprentice. At this time the pauper was under age, and is yet under age.—DUNNING: At the time of the pauper's entering into the second service he was not *sui juris*. Though, in general, and in case of adults, drawing a pen through the indentures, and delivering them up, may amount to a vacating of them, yet such an intention could not, during the infancy of a parish-apprentice, be legally carried into execution without the assent of the justices and parish-officers; he cited the cases of *Rex* v. *Ecclesal Bierlow* (*b*), and *Rex* v. *Austrey* (*c*), and it seemed to be admitted, both upon the bench and at the bar, that the indentures of an infant parish-apprentice cannot be dissolved, but under the consent of all parties concerned (*d*).—THE COURT were of opinion that the indenture continued in force.

(*b*) *Ante*, pl. 544.
(*c*) *Ante*, pl. 542.

The assent of the parish-officers is not necessary to the cancelling parish-indentures, *after the apprentice has attained the age of* 21; and therefore, if after that age the apprentice *purchase* of the master the remainder of his

547. *Rex* v. *Harberton*, *H. T.* 26 *G.* 3 EDITOR'S *MSS.*—*E.* was bound by the parish of *H.* apprentice to *S.*, of that parish, till he should be *twenty-four* years of age. He continued to live with his master till within one month of his attaining *twenty-one*, when he deserted his service, and was absent seven months, and then returned to his father in *H.*, with whom he staid a few weeks. He then offered himself as a servant to *E.*, of *A.*, who refused to take him until he showed him a receipt from his master, *S.*, for buying out his time, which receipt was in the following words: "*February* 24, 1783.—RECEIVED of *E.* the sum of 4*l.* 4*s.*, for the "remainder of his time, by me, WILLIAM SOPER." This receipt was obtained by *E.*'s father, at the request and with the concurrence of *E.* At the time when the receipt was signed, and the

(*d*) Rex v. Weddington, *ante*, pl. 545.

money paid, *S.*, the master, offered to give up the INDENTURE, which the father then did not take, not thinking it material. *E.*, the apprentice, was not present at the time of applying for the receipt, or at the time of signing it. The master continued to keep the INDENTURE in his custody, uncancelled, and delivered it up to *E.* on his application for it, after attaining his age of 24 years. After signing the said receipt, and paying the said money, *E.* hired himself for a year to the said *Edmonds*, and lived with him that year, and made another agreement for another year, which he also served in the parish of *A.* At the time of *E.*'s hiring himself to *Edmonds*, he showed *Edmonds* the receipt.—NORRIS admitted, that under the authority of *Rex* v. *Ecclesal Bierlow* (*a*), the consent of the parish-officers was not necessary to the dissolution of a parish-apprenticeship after the apprentice had attained *twenty-one* years of age, but contended, that the apprenticeship in this case continued, because the INDENTURE was not *cancelled* or *delivered up*, which would be equivalent to cancelling; and, therefore, that *E.* was incapable of contracting to serve any other master during the term. In the case of *Rex* v. *Weddington* (*b*), the indentures were destroyed; here there was nothing more than an agreement between the parties, which was not sufficient to dissolve the indentures. In *Rex* v. *St. Luke*'s (*c*), the apprenticeship was held to continue, notwithstanding a parting by consent; and the same thing was held in a late case of *Rex* v. *St. Mary, Lambeth* (*d*).—BULLER J. said, the case of *St. Mary, Lambeth*, was determined on the particular assent of the master to that service; but it was strong to show that the apprenticeship continues, notwithstanding *an agreement.*—LAWRENCE, *contrà*: The father, in this case, was, undoubtedly, *the agent* of the son. It is, therefore, to be considered as if the master and *E.*, the apprentice, had met, and the master, on payment of the money, had given a receipt to the apprentice himself. It is settled in *Rex* v. *Titchfield* (*e*), that cancelling is not necessary. It was held sufficient that the indenture was delivered up, although still a subsisting deed. And the same point was determined in *Rex* v. *St. Mary Kallendar.*(*g*) The only question, therefore, is, Whether its remaining in the hands of the master could make any difference? The master could make no use of it: he could not compel the service of the apprentice, who was, therefore, *sui juris*, and capable of contracting. He might have gone into equity, and had a performance of the agreement; and in settlement by estate an equitable interest is sufficient. But here there was even a remedy at law; for the apprentice might have maintained *trover* for THE INDENTURES, or recovered damages for a breach of the agreement. But, in fact, the point is already decided in the case of *Rex* v. *Justices of Devonshire* (*h*), where it was determined that the apprenticeship was dissolved under circumstances precisely the same; and the Court, in sessions cases, for the sake of certainty, always adhere to a decision, even if they disapprove of its principle. As to the case of *Rex* v. *St. Luke*'s, the master there might have exercised his power whenever he pleased, and a court of equity would not have given relief. The same answer would apply to the case of *St. Mary, Lambeth*, but there the apprentice was not of age.—LORD MANSFIELD said, the Court would look into the cases; that the great object to be aimed at was certainty; and, therefore, the Court should avoid going on equitable circum-

time, the apprenticeship is *dissolved*, although the indentures are neither delivered up or cancelled.

S. C. 1 T. R. 189.

(*a*) *Ante*, pl. 544.

(*b*) *Ante*, pl. 545.

(*c*) *Vide post*, pl. 562.

(*d*) *Vide post*, pl. 571.

(*e*) *Ante*, pl. 543.

(*g*) *Ante*, pl. 540.

(*h*) Cald. 32.

stances and subtleties. The case, accordingly, stood over till this term, when his Lordship delivered the opinion of the Court.—LORD MANSFIELD: It is of more consequence that the law should be certain, than what it is; and this is more particularly true with respect to the Law of Settlements. It would have been more convenient if the Court had never gone further than to inquire, Whether, in such cases as this, the indentures were actually *cancelled* or *given up*? but the cases have already departed from that line, and gone into the particular circumstances; and it would now be more inconvenient to over-rule those cases. It is a clear line to go by, that wherever the indenture is so far made an end of as to give the apprentice a remedy *at law*, it shall be considered as *a dissolution* of the apprenticeship: but if it were extended to every case where a court of equity would relieve, the inquiry would be endless; and different magistrates, not bred to the profession, though good and honest men, would, when left to decide *secundem discretionem*, breed endless confusion, by frequently, in the like cases, making very contrary determinations. Rules of law, therefore, in cases like the present, should be positive and fixed. The true question, therefore, is, Whether the facts here are such as put an end to the indentures at law, and could be pleaded in bar to an action on it? The master received 4*l.* 4*s.*; he gives a receipt for it, as a consideration for the remainder of the service; and he offers to deliver up the indentures. After this, if the master had brought an action on the indentures, we are of opinion, that the apprentice might have defended himself by plea of accord and satisfaction, or he might have maintained *trover* for it. The indenture must be considered as if it no longer existed, and the consequence is, that the apprentice had a right to hire himself to another master.—Order quashed.

An infant apprentice leaving his master's service and going into the king's service with his master's consent does not discharge the indentures.

548. *Rex* v. *Hindringham* (*a*), *H. T.* 36 *G.* 3. 6 *T. R.* 557.—*Beck*, in *March* 1780, being of the age of 17, bound himself an apprentice to *Wells*, then of *Blakeney*, master mariner, for four years; and resided there, under his indenture of apprenticeship, more than 40 days. When he had been an apprentice about 13 or 14 months, he went on shore from out of one of his master's ships at *B. B.*, and meeting with a press-gang, he entered into His Majesty's service, as a sailor, with the consent of his master; but the indentures of apprenticeship were not delivered up or cancelled by the master during the term of his apprenticeship. He continued in the King's service about two years, and was then discharged; when he went to his father's house at *Bale*, in *N.*, and continued there for some weeks: and at *Whitsuntide* 1783, let himself to *Wilson*, of *H.*, from that time to *Michaelmas* following; and at that *Michaelmas* (which was the *Michaelmas* before the term of the indenture of apprenticeship would have expired) the pauper let himself the following year to *Wilson*, and served him for that year in *H.* The term of years mentioned in the indenture of apprenticeship expired on the 2d *March*, in the last year, in which the pauper served *Wilson*. *Wells*, the master, lived all the time at *Blakeney*, except when at sea, and *Blakeney* is about six miles from *Bale*, and about the same distance from *H.*—LORD KENYON C. J.: There is no ground for saying that the apprentice did any act to put an end to the indentures when he entered into the King's service. But I

(*a*) See Rex *v.* Mount-Sorrell, *post*, pl. 551.

e it may not be taken for granted that an infant, who binds
lf apprentice, a contract so notoriously for his own benefit,
put an end to that contract at any time during his minority.
r my protest against discussing that question now: it will be
ient to determine it when it necessarily arises. In this case
auper bound himself to *Wells* by indentures, under which he
d in *Blakeney* more than 40 days; afterwards, when he was
ed into the King's service, he agreed to go as a volunteer,
the consent of his master, evidently implying that he did not
put an end to the indentures. It appears to me that the
tures still continued in force, and, consequently, that the
er could not enter into a legal contract of hiring with *Wilson*
e time he engaged with him, he not being at that time *sui*

). *Ashcroft* v. *Bertles*, *E. T.* 36 *G.* 3. 6 *T. R.* 652. — This
n action on the case brought against the defendant. There
ne count in the declaration for enticing away, and another
arbouring, *W.*, the apprentice of the plaintiff. There was no
t evidence of the defendant's having enticed away the appren-
but clear evidence of his having harboured him. It appeared
e indenture of apprenticeship, dated 4th *December* 1792, that
hen under age, was bound apprentice to the plaintiff for five
to learn the business of a potter. That before *W.* had any
ection with the defendant he had eloped from his master and
one to sea for a year; that his master received him again on
turn as his apprentice, he having then attained his age of 21
; and that the apprentice left his service last *August* and
to *Manchester*, where he was found in the service of the
dant, who refused to part with him, though he had notice of
ving been bound an apprentice, and had very recently left his
r's service. It also appeared that *W.* chose to stay with the
dant. At the trial before HEATH J. it was insisted by the
el for the defendant that *W.*, by going to sea, avoided the
ture. The learned judge had some doubts at the trial, whe-
he infant might not bind himself at common law, it being a
act for his benefit; and it seemed to him, that as the plaintiff
ed *W.* again as his apprentice on his return from sea, it was
mpetent to the defendant, who was a stranger and a wrong-
to call in question the validity of the apprenticeship. The
ound a verdict for the plaintiff with 2*l.* damages. The case
ber v. *Dennis* (*a*) was referred to, where, in an action by the
n against the defendant to recover some seamen's tickets
the apprentice had earned, and which had come to the
dant's hands, *Holt* C. J. said, that being an apprentice *de*
would suffice against a wrong-doer. — THE COURT declared
elves perfectly satisfied with the verdict, and said, that
sing the indentures to be voidable, which they were not
ed to decide, the mere act of quitting the master's service
ot an avoidance of them. — Rule discharged.

). *Rex* v. *Chipping Warden*, *H. T.* 39 *G.* 3. 8 *T. R.* 108. —
s born in the parish of *B.*, and in 1776 was bound apprentice
lentures to *G.*, blacksmith, of the parish of *R.*, for the term
e years. He continued in the service of *G.* at *R.* for two
and a half under the indentures, when his master left off
ess and went to reside in the parish of *M.* At that time the
er agreed verbally with his master that he, the pauper, should

Qu. Whether an infant can discharge his indentures? but if so, the act of his leaving the master's service, and going into the service of another, does discharge them.

(*a*) Vol. i. pl. 626.

Indentures cannot be dissolved by an agreement of the apprentice with his master to purchase the remainder of his

time, the indentures to remain with the master till the money was paid.

give him 7*l.* for the rest of his time, his master not wishing to turn him over to any one; and it was agreed that the master should keep the indentures in his custody till the 7*l.* were paid, which was to be discharged from time to time as the pauper could earn it and make it convenient to pay it. The pauper considered himself at liberty to work with any master he pleased, and did work with different masters until the harvest of 1779, when, at the request of his former master, *G.*, he came to serve him as a labourer for about a month, and received his wages according to the rate usually given to labourers in the time of harvest; the amount being deducted from the 7*l.* which the pauper had agreed to pay to *G.* *G.* afterwards recommended the pauper to serve one *C.*, a blacksmith in *M.*, into whose service he went with the knowledge of *G.*, and continued therein about 12 months. The indentures were not delivered up until five or six years after the apprenticeship had expired. — LORD KENYON C. J. It is clear that in general an apprentice is not capable of contracting the relation of servant to any other master until the end of the term for which he was bound. But it is equally clear that if the master and apprentice put an end to the apprenticeship by mutual consent, it is the same as if the indentures had never been executed, and the latter may gain a settlement by hiring and service with any other master before the expiration of the time which he was bound to serve as an apprentice. Then there is a third case, that where the apprentice leaves his master and enters into the service of another, if the indenture still subsist, he is not *sui juris*, but is incapable of gaining a settlement by serving another master, unless he serve with the consent of his former master, and in such case he gains a settlement, not as a hired servant, but as an apprentice. These are axioms in this branch of settlement-law, and cannot now be called in question. Now what are the facts of this case? the pauper was bound an apprentice to a master residing in *R.*, who two years afterwards discontinued business; at this time the parties did not put an end to the apprenticeship, but, on the contrary, the apprentice agreed to pay 7*l.* to the master, who was to keep the indenture until that sum was paid; the master, all this time, keeping a controul over the apprentice. The pauper then went into different situations, and, among the rest, he served a person of the name of *C.*, into whose service he went at the recommendation and with the knowledge of his first master, the indentures still continuing in force. Then, according to all the authorities, this must be deemed a service under the indentures. The case of *Rex* v. *Sandford* (*a*) differs from the present in a very essential point. There the parties did all they could to put an end to the apprenticeship; but here they agreed that the indentures should continue in force. My opinion in this case does not proceed on the ground that the pauper served *C.* a year as a hired servant, but that he served him under the indentures of apprenticeship with the consent of his original master.

(*a*) *Ante*, pl. 572.

Where an infant bound himself apprentice for seven years by indenture, to which indenture he and his master were the

551. *Rex* v. *Mount-Sorrell*, *H. T.* 55 *G.* 3. 3 *M.* & *S.* 497. — Removal from *B. L.* to *M. S.* — Order confirmed, subject, &c. The pauper, in 1807, being under age, bound himself apprentice by indenture for seven years to a person residing in *M. S.*, the pauper and the master being the only parties to the indenture. When the pauper had served about a year, the master left his *house* and run away for debt, in consequence of which the pauper

d to him by letter to give up the indenture, and with the r's consent the indenture was given up to the pauper by the who had the custody of it; the term of seven years not then expired, and the pauper being still under age. The nt of the pauper's mother, who was his only surviving parent, ot asked at the time of making the indenture, or when it was up. The pauper, after the indenture was given up, and the term for which it was made, and while he was under ired himself as a yearly servant, and served the year in

The case of *Rex* v. *Hindringham* (*a*) was cited. — ELLENGH C. J. Is not this a case in which it was clearly for the t of both parties that the indenture should be put an end to? naster had run away, and was no longer in a situation to instruction or maintenance to his apprentice. Therefore, indenture had continued, the consequence must have been, ne apprentice would have remained in a state of ignorance arvation. If that were a state for the benefit of the infant, would be something for the argument. But as it is, the s have done that for themselves which the magistrates, upon ation to them, would have ordered to be done, they have rged themselves of the indenture which was burdensome to parties. Under these circumstances, I am of opinion, that competent to them to discharge themselves of each other, the continuance of the contract would certainly have been benefit to the master, and as certainly would have been licial to the apprentice. The benefit of the infant is to be ded, and in looking to that, one cannot but see that idleness, he probability of extreme indigence, were the necessary quences of continuing the indenture from which the magis- would have interposed to relieve him. I therefore think re do not indulge any mischievous discretion in the infant, we permit him to redeem himself from such a probable of indigence and idleness. Then, if this be so, the pauper o longer precluded from entering into another service than his indenture continued. — LE BLANC J. In *Rex* v. *Hinam*, the master and apprentice did not consent to the indenbeing delivered up or cancelled. — BAYLEY J. I consider se of *Rex* v. *Hindringham* as having proceeded upon the d that it was for the infant's benefit that the indentures l continue. Here we are in a case where it was notoriously prejudice of the infant that the indenture should continue; ore, I think, it was in the power of the master and infant ter, by vacating the indenture, to dissolve the contract. — of Sessions quashed.

only parties, and after serving some time, in consequence of the master's running away and leaving him, procured the indenture to be given up to him with the master's consent, and afterwards, during the seven years, hired himself as a yearly servant, and served a year: Held, that he acquired a settlement by such hiring and service, for it was for the infant's benefit, under the circumstances, that he and his master should be at liberty to put an end to the indenture.

(*a*) *Ante*, pl. 548.

Rex v. *Skeffington*, *H. T.* 60 *G.* 3. and 1 *G.* 4. 3 *B.* & *A.* — For the particulars of this case, see Vol. i. pl. 562.

When the mother of an apr, whose time had not expired, applied to his master, to give him up to her, and the master consented to it, and all having agreed to part, the apprentice went away; but the indenhich was in the hands of a third person, was never applied for nor given up: Held, that renticeship was not put an end to by this agreement, although the master said that he would ven up the indenture, if he had had it in his possession at the time, and afterwards refused back the apprentice.

Rex v. *Great Wigston*, *M. T.* 5 *G.* 4. 3 *B.* & *C.* 484. — der, dated the 3d day of *February* 1828, *John Stanyan*, his *Mary*, and their child *Olive*, were directed to be removed St. *M.* to *W.* On appeal, the Sessions confirmed the order,

An infant bound himself apprentice for seven years, and served three of

them; having then quarrelled with his master, the latter offered to sell him the remainder of his time for 6*d*. The infant paid the money, and went away, and bound himself to another master in another parish: Held, that the infant had no power to dissolve the first apprenticeship; the second binding, therefore, was invalid, and no settlement could be gained by service under it.

subject, &c. The pauper, when he was 11 years of age, was bound apprentice to *J. H.*, in *G. W.*, for the term of seven years. The indenture was executed by the master, the pauper, and *J. B.*, the grandfather of the pauper, the pauper's father being a soldier abroad. The grandfather paid a premium of 7*l.* to *H.* The pauper served *H.* under this indenture for between three and four years at *W.*, when some disagreement taking place between them, *H.* agreed to sell the pauper the remainder of his time for 6*d.* The pauper accordingly paid *H.* the 6*d.*, and left him on the same day. The indenture had never been in the possession of any of the parties, but had been kept for all the parties by the person who prepared it, and no application was made for it to be delivered up. The grandfather was not a party to the agreement for parting entered into between the pauper and his master, and was not even privy to it. A few days after the pauper left *H.*, he bound himself apprentice to *T. W.*, of the parish of *St. M.*, for seven years, and served him under the indenture for five years, and resided during the whole of that time in that parish. — ABBOTT C. J. I am of opinion that the order of Sessions was right. It is a general rule of law, that an infant cannot do any act to bind himself, unless it be manifestly for his own benefit. Binding himself apprentice has been considered such an act, and therefore it has been held, that an infant is competent to make such a contract. If then it is for the benefit of the infant to bind himself an apprentice, it is impossible to say generally, that it is for his benefit to dissolve such a connexion; such a position involves a contradiction. That being the general rule, we must inquire whether in the particular instance it is for the advantage of the infant to dissolve his apprenticeship? In the case of *Rex* v. *Mountsorrell* (*a*), the master had absconded, and the infant could no longer derive instruction or support from him. Under those circumstances, the Court thought that the dissolution of the relation of master and apprentice was beneficial to the latter, for unless that had been done, the apprentice must have remained unemployed and uninstructed. Here are no facts stated whence we can infer that it was for the infant's benefit to put an end to the apprenticeship; this case therefore falls within the general rule, and the first binding not being dissolved, the second was necessarily invalid, and the service under it could not confer a settlement. — BAYLEY J. The decision of the Court of Quarter Sessions upon this point was perfectly correct. The only error that they have committed was, in sending for our opinion a case upon which no reasonable doubt could be entertained. — HOLROYD J. concurred. — Order of Sessions confirmed.

(*a*) *Ante*, pl. 551.

V. *Of binding to one Master and Service with another.*

An apprentice may be bound to one person, and serve another, and he shall gain a settlement with the master with whom he resides. S. C. 1 Sess. Cas. 112. Foley, 216.

554. *Holy Trinity* v. *Shoreditch*, *M. T.* 3 *G.* 1. *Str.* 10. — PARKER C. J. delivered the resolution of the Court. This is an order for the removal of one *F.* from the parish of *H. T.* to *S.* by which it appears that *F.* was bound as an apprentice to one *T.* with intent that he should serve *G.*; which he did for three years. And it has been insisted, that he being bound to *T.*, who lives in *Trinity* parish, his settlement is there; and not in *S.*, where the service was. But we are of opinion the justices have done right in sending him to *S.*, where the service actually was. It is the same thing as

if *T.* had turned him over to *G.*; in which case there would have been no question, but he had gained a settlement in *G.*'s parish. If the master remove out of one parish into another, the apprentice gains a settlement if he live there 40 days. The turning over an apprentice is like the assigning any deed. In this case *T.* was only a trustee. There is a great deal of difference between apprentices and other servants; for apprentices are not presumed to become chargeable, because the trade and mystery they learn is their estate. Therefore, the order must be confirmed.

But the service with the second master must be with the consent of the first.

555. St. Olave's v. *All-Hallows*, *T. T.* 9 *G.* 1. 8 *Mod.* 169. — The case was thus: One *U.* was bound apprentice to a farrier in the parish of *St. O.*, and, having served two years of his time in that parish, was, by a *verbal agreement* between his master and one *D.*, sent to serve the said *D.* in the parish of *A. H.* in *L.*, and there he served him five years. Afterwards, coming back into the parish of *St. O.*, and being likely to be chargeable, he was removed by an order of two justices to the parish of *A. H.* — THE COURT: This very point was determined in *St. Leonard* v. *Holy Trinity*(*a*): an apprentice was bound to a master living in one parish, and, serving some part of his time there, was, by *verbal agreement* made between his master and another, to serve out his time with that other master in another parish; and this was adjudged a good settlement in that other parish where he last served; for it shall be still intended that he served his first master upon that agreement, and that it was but a continuance of his apprenticeship. And so IT WAS ADJUDGED in the principal case.

S. C. Str. 554. Sett. and Rem. 114. pl. 153. 1 Sess. Cas. 275. 2 Salk. 479.

(*a*) *Ante*, pl. 554.

And the consent is sufficiently signified by his *hiring out* the apprentice to the second master.

556. Rex v. *St. George's, Hanover Square*, *M. T.* 8 *G.* 2. *Burr. S. C.* 12. — *W.*, a parish child, was bound apprentice to *L.*, of *St. G.*; where she served 40 days, and gained a settlement; and afterwards, during her apprenticeship, was, by *parol agreement*, hired out by her master to *H.*, in the parish of *St. M.*; where she resided and worked for one year and upwards, the said apprenticeship continuing; during which time her master *L.* received her wages, and found her in clothes. — THE COURT said, that the consent of the first master to the service of the apprentice with the second master under the indentures was in this case sufficiently expressed; and, after consideration, they were unanimously of opinion that *W.* had gained a settlement in *St. M.*

S. C. 2 Sess. Cases, 138. Str. 1001. See also Cald. 53. *notis.*

An apprentice, assigned by his master's widow, before administration granted, and turned over by the assignee, under a parol agreement, to a third master, gains a settlement by service with such third master, under the original indentures.

557. Rex v. *East Bridgeford*(*b*), *T. T.* 13 *G.* 2. *Burr. S. C.* 133. — *A.* was bound apprentice by indentures to *H.*, of *O.*, webster, for nine years, and duly served him the first four years of the term at *O.* *H.* then dying intestate and insolvent, his widow, without any administration taken out, assigned him over to *G.* of *S.*, a certificate man, for the remainder of the term, in consideration of 3*l.* paid to her by *G.*; and, pursuant thereto, he lived with and served *G.* about a year and a half at *S.*; and then *G.*, in consideration of 40*s.* paid him by *B.*, of *B.*, did, with the consent of *A.*, assign him over, by verbal agreement, to *B.* for the remainder of the term of nine years; and he accordingly lived and served out the remainder of the term with *B.*, at *B.* — THE WHOLE COURT were unanimous this was a good settlement in *B.*, where the apprentice lived above 40 days with *B.*, since, to this assignment, though only a verbal one, there was the consent of all the parties concerned; and that he lived and inhabited at *B.* under the terms

(*b*) See Rex v. Barnsley, *post*, pl. 580.

of the apprenticeship, as an apprentice bound according to the act of parliament. They observed, that an assignment of an apprentice is not considered as a strictly legal transaction, because the person of a man is not strictly and legally assignable; but it has been an equitable construction that where an apprentice has lived 40 days under an assignment, he shall thereby gain a settlement, because of the consent. The statute 13 & 14 *Car.* 2. *c.* 12. *s.* 1. requires the sending *to the place where he lived* as apprentice 40 days. The act of 3 & 4 *W.* & *M. c.* 11. *s.* 8. only requires a binding.

A parish apprentice, whose indenture is delivered to a second master, and all interest in the apprentice relinquished by the first master, by indorsement on the indentures, gains a settlement by residence with such second master. S.C. 1 Wils. 96.

558. *St. Petrox* v. *Stoke Fleming*, *T. T.* 19 *G.* 2. *Bur. S. C.* 250. — *A. G.* was, on the 5th of *September* 1733, bound by indenture a parish-apprentice to *R. G.*, of *St. P.*, till she should have accomplished her full age of 21 years. On the 17th *June* 1738, her mistress, by indorsement on the indenture, delivered it up, together with all her right, interest, and term of years then to come and unexpired, in the same, to *F.*, of *S.* The pauper, being then of the age of 14, did, by indenture, dated 17th *July* 1738, voluntarily bind herself apprentice to the said *F.*, to serve until the 1st of *November* 1744; and she served her master in *S.* from that time for several years. On the 1st of *January* 1745, she intruded into the parish of *St. P.*, and on the 9th of the same month, the Sessions vacated the original indentures of the 5th of *September* 1733, on account of the binding not being pursuant to the alternative in the statute, *viz.* until she shall attain the age of 24 years, or the time of marriage. The pauper, on becoming chargeable, was removed from *St. P.* to *S.* — THE COURT thought the original indenture not void for want of the alternative of marriage; though, perhaps, not obligatory upon the parties; and said, that although *an assignment* of an apprentice, except in *London* by custom, cannot strictly be made, yet, as this assignment was with the assent of the mistress, the service under it will be good for the purpose of gaining a settlement: for the servitude continued *under the first binding*.

A parish-apprentice is bound to *A*, and serves part of his time, then goes with *A*'s consent to live with *B*; then runs away and lives with his mother; is then bound out by *B* to *C*, with whom he resides the last 40 days. He gains a settlement in the parish in which he resides with *C*.

559. *Rex* v. *Clapham*, *E. T.* 20 *G.* 2. *Burr. S. C.* 266. — The pauper, *W.*, was bound a parish-apprentice, by the assent of two justices, to one *J.*, of *A.*, tenant to the Rev. Mr. *J.*, of *C.*, who had covenanted to indemnify his tenant against all parish charges. *J.* carried him to his landlord, together with the indenture, who accepted, received, and provided for him. He desired the mother to provide for the boy; who did so, for three years, in *A.*; and Mr. *J.* paid her 20*s.* a year. Then he lived with him in *C.* eight weeks; and then run away to his mother, and remained a quarter of a year in *A.*; and Mr. *J.* consented to his being there. Then the pauper was placed with his brother, a mason in *A.*, as an apprentice, by Mr. *J.*, who gave him a new suit of clothes; and he served his brother (*a*), as an apprentice, a twelvemonth or two, in *A.*; the brother took him as an apprentice, and quitted Mr. *J.* of him. But the representatives of the first master, who was then dead, knew nothing of this, nor ever assented to it; nor any thing of his living with his mother. — LEE C. J. The statute 3 & 4 *W.* & *M. c.* 11. *s.* 8. only requires a binding by indenture, and gives a settlement where the last 40 days are served. Here is a binding by in-

(*a*) It is not stated expressly "that the pauper served his brother, the mason, "under the indenture."

denture, though the time is not stated: and the first master delivers over the apprentice and indenture to his landlord, who receives him. This, therefore, must be looked upon as receiving him under the terms of the indenture. If there had been no inhabitancy elsewhere, after the boy's living eight weeks with Mr. *J.* at *C.*, the settlement had been there. But a settlement is fixed at *A.*, by the boy's living there a quarter of a year, with the consent of his master; for this is living there under the original binding, as no dissent of the first master is stated. Then the agreement with the mason is not stated to be a new binding. The first master delivered over all his right, and the indenture, to Mr. *J.*: and it is not necessary to state any assent from him. The case of *East Bridgeford* (*a*) is in point. However, there is no ground for the distinction "that a second master cannot assign to a third;" that is, so far as to gain a settlement by the service under it. — DENNISON J. concurred, that the service to the mason was a service under the original binding; and that no actual consent of the first master was necessary. This has been called a new binding to the mason; but a new contract could not be made whilst the former subsisted, nor the original one dissolved; nor does such a thing seem to be intended; and, therefore, this is a service under the first binding. — FOSTER J. was of the same opinion.

(*a*) *Ante*, pl. 557.

560. *Rex* v. *Fremington*, *E. T.* 30 *G.* 2. *Burr. S. C.* 416. — The pauper was bound apprentice, by a parish-indenture, to *Richards*, of *F.*, to serve him till the age of 21 years or day of her marriage. She came of age on the 23d *November* 1753, when her apprenticeship expired. She served her master, in *F.*, till about the 1st of *June* 1753; and some time before the said 1st of *June*, *R.* told her that he had no business for her; and she should go where she would. She accordingly went to get a place, but could get none, and returned to her master. Afterwards, *R.* meeting with a relation of his, one *Nott*, of the parish of *S.*, who complained of wanting a maid-servant, *R.* answered, "he was over-'stocked with maids, and had an apprentice-maid (meaning the 'pauper) which he would spare to *N.*, if *N.* and she could agree 'as to time and terms:" but made no agreement with *N.*; nor was the pauper present. Afterwards, *R.* told the pauper, "that 'she might go to *N.*, and live with him, if they could agree." And the pauper went to *N.*, on the said 1st of *June*, and made an agreement with him, "to serve him till *Lady-day* following, for 'the wages of 1*l.* 12*s.*" And she lived with him, in *S.* aforesaid, from the said 1st of *June* till the 15th day of *November* 1753, and received wages for that time; and then went back to her indenture-master (*R.*) in *F.*, with whom she staid eight days; and then her apprenticeship expired, by her coming to 21. — LORD MANSFIELD said, that, as the general principle was admitted, the case was reduced to a very short question. It was very plain, he said, that the pauper was not discharged from her apprenticeship: her master only gave her permission to go elsewhere, and serve another person for her own benefit. She did so: and afterwards, she came back again to her master, and was received by him, and staid with him eight days, which was to the end of her term of apprenticeship. So that it was no more than a generous intention of her master, to give her this permission to serve the other person for her own benefit: but the apprenticeship neither was nor was

A parish-apprentice, whose master, not having sufficient work to employ her, consents to her hiring herself as a servant to another person in a different parish, with whom she resides for above 40 days, and then returns to her first master, and resides with him for the remaining *eight days* of her apprenticeship; she gains a settlement under the indenture with the second master.

intended to be, discharged. Consequently, the service with *N.* in *S.* was a continuation of the apprenticeship, and performed under it. — DENNISON and FOSTER Js. expressed themselves to the like effect: and the latter mentioned the case of a servant who was (*a*) permitted by his master to go away three weeks before the end of his year, in order to take the benefit of the herring-fishing season; and was, notwithstanding his having done so, adjudged to have gained a settlement.

(*a*) Rex *v.* Goodnestone, *ante*, pl. 431.

An infant-apprentice cannot gain a settlement under the indentures by a hiring and service to a second master, upon the supposed discharge of the indentures, although by the express consent of the original master.

561. *Rex* v. *Austrey*, *H. T.* 31 *G.* 2. *Burr. S. C.* 441. — *Orton* was, at the age of 10 years, bound apprentice by the parish of *G.* to *Lythall* of the said parish, until he should attain the age of 24 years. The indenture was approved of by two justices of the peace. *O.* served his master, in *G.* under the indenture, till *Michaelmas* 1754, when, in consideration of 40*s.* then paid him by *O.*, he agreed to discharge him from his apprenticeship: the receipt of the money, and the discharge were indorsed and written by the master on the back of the indenture, which he then delivered up to *O.*, who was *under age* at the time he so consented to his discharge. He then left *L.*, and hired himself for a year, and served for a year, at the parish of *H.*; and afterwards, at *Michaelmas* 1755, he hired himself for a year to *Lilly*, in the parish of *A.*; served the year, and received his year's wages. On 12th *July* 1757, he was upwards of 23 years of age; but had not attained the age of 24 years. — LORD MANSFIELD: There is nothing in this case; the pauper was under age, and his consent was exactly as if he had given no consent at all; for the consent of an infant-apprentice can signify nothing, nor be of any validity. Then, as his consent is of no validity, his subsequent services, under the hirings stated in the order, can never be considered as performed by the master's (*b*) leave and consent; and so as being a service of his master under the indenture; because this is no express and explicit leave and consent given by the master to the (*c*) particular service; but was intended to be quite general, and is even founded in a mistaken apprehension, that the apprentice could consent to his being discharged; which he, being an infant, was not capable of doing.

(*b*) *Vide* the case of Buckington parish, *ante*, pl. 539.

(*c*) Which was the case in Rex *v.* Fremington, *ante*, pl. 560.

An apprentice working with several masters under a *general licence* by the first master to serve where he would, gains no settlement thereby. 8. C. 1 Blac. Rep. 553.

562. *St. Luke's* v. *St. Leonard's*, *T. T.* 5 *G.* 3. *Burr. S. C.* 542. — The pauper, at 15 years of age was bound apprentice by the parish of *St. P.*, to one *Frost*, a shoemaker in *Southwark*, till he should come to the age of 24 years: and he served him there three years. The master then removed to the parish of *St. Luke*, taking the pauper with him, where he served four years. The master then told him to go about his business, and work for himself: but no one was present at the parting, except the master and himself. The indentures were not cancelled nor delivered up. The pauper hired himself to several masters of the same trade as a journeyman-shoemaker in different parishes; and believed the said *F.* did not know what masters he worked with, after he left him; nor was he ever called upon by, nor did he ever account with said *F.* for what he earned, but applied the money to his own use; nor did the said *F.* ever make any inquiry after him that he knew of, or make any provision for him, after he left him. He worked and lodged the last 40 days before he attained the age of 24 years, in the parish of *St. Leonard*. — LORD MANSFIELD: The indenture of apprenticeship remained in force; and the relation of

: and apprentice continued, But this service in *St. Leonard* t be considered either as a service of his master, or as an as- nt. — WILMOT J. The apprentice's settlement in *St. Luke's* ued; and he was incapable of making a contract by way of and service, or of any act to gain a settlement. If the had assigned over this apprentice to a particular person, it have gained him a settlement as a service to the first r; but here the apprentice was *sui juris*, as to the purpose of g a settlement, as serving his first master. What had passed total dissolution of the apprenticeship, as to this particular e of gaining a settlement under the indenture. This working *Leonard's* was not carrying on the business of the first there, or serving under the original apprenticeship in this of *St. Leonard*. — YATES J. was of the same opinion. He not gain a settlement there, by serving in that parish under ract, which he was not *sui juris* to make. It differs from an ment of an apprentice to serve a particular master in another . That indeed may be deemed a service of his first master t parish. Here was no privity between the first master e others whom he served after he had quitted the first. It liberty given by the master to the apprentice to go where he , and work for himself where he would. Therefore the set- it continued to be in that parish where he last served his aster as an apprentice for 40 days, which was in *St. Luke's*. RD MANSFIELD: The indenture subsisted; and this service *Leonard's* cannot be considered either as a service of the aster, or as an assignment.

. *Rex* v. *Tavistock*, *E. T.* 7 *G.* 3. *Burr. S. C.* 578. — The , was bound an apprentice, by the parish of *L.*, to *Rundle*, whom he lived several years in that parish; and then *R.* erred him, by assignment, to *P.*, of the parish of *M.*, with he lived till he was 20 years and a half old; at which time ered his service to *M.* of the parish of *K. M.*, apprehending e was an apprentice to *P.*, sent his two sons to *P.*, to know er it was with his consent that *C.*, the pauper, should live im. To which *P.* answered, "With all my heart; he may with *M.*, or anybody else, provided he performs his agree- t with me; which was, to pay 1*l.* 1*s.* a year during the ainder of his apprenticeship." Accordingly, he lived with the parish of *K.*, for a year and upwards. The Sessions of opinion that he gained no settlement thereby, and they ed the order of two justices removing him from *T.* to *K.* — MANSFIELD. The only question is, Whether *P.* consented? lear that he did consent; and his consent included that of rst master. ASTON J. concurred, and cited the case of *Rex* st *Bridgeford* (*a*), where a second assignment was holden — THE OTHER JUDGES were of the same opinion.

An apprentice assigned to a second master, and hired to a third with the second master's consent, gains a settlement under the indentures with the third master. S. C. 1 Bl. Rep. 635. Cald. 128.

(*a*) *Ante*. pl. 557.

. *Notton* v. *Roystone*, *M. T.* 9 *G.* 3. *Burr. S. C.* 629. — s was bound out a parish-apprentice to *Cuttle* of *Heendley*. he had served about six years, she quitted the farm to her , *C.*, and left the apprentice there with her son *S. C.*; the r lived with *S. C.* several years; then being desirous to leave rvice, he applied to his master, who told him, *he might go he pleased*; thereupon he left his master, and went to the statutes at *Wakefield*, and hired himself to *Walker of* y, for a year; afterwards he hired himself to several dif-

An apprentice whose master tells him he *may go where he pleased*, does not gain a settlement under the indentures by serving another master.

ferent places; but did not continue in any of them for 12 months; he received the wages at every of these places for his own use, and never accounted either with *S. C.*, or *H.*; in or about the month of *May* or *June* 1766, *S. C.* gave up his indentures to him; in *February* 1767, *B.* of *N.*, wanting a servant, one *D.* of *H.*, informed him that the pauper was in their town, and out of place; thereupon the pauper hired himself to the said *B.*, and served *B.* at *N.* until some time in *August* following, when he left his service; he did not act afterwards to gain a settlement; *D.*, soon after his conversation with *B.*, acquainted *C.* that he had recommended the pauper to *B.*'s place; and *C.* thereupon said, he thought it a good place for him: the pauper, in the month of *May* 1767, attained his age of 24 years. — THE COURT were clearly of opinion, that the service with *B.* in *N.* was not a service under the indentures of apprenticeship; and, consequently, that his residence in that parish upwards of 40 days was not sufficient to gain the apprentice a settlement there.

A parish-apprentice resides with his master for two years, is then turned over to a person in another parish, where he resides above 40 days, but on his becoming a cripple is sent back to his original master, who sent him to board in his parish with his mother, where he resides above 40 days *unable to serve his master*, and is then discharged by the Sessions: he gains a settlement by this last residence of 40 days.

S. C. Burr. S. C. 706. But see Rex *v.* Barmby-in-the-Marsh, *ante*, pl. 530.

565. Rex v. *Charles*, *T. T.* 12 *G.* 3. — The pauper was bound, by the parish of *K.*, to *F.*, for an estate which he rented in that parish of *L.*, who covenanted with *F.*, that if a second apprentice was bound for that estate (which second apprentice *H.* was), that he and his representatives would discharge the said *F.* from any expence that he might incur thereby. *H.*, being bound to *F.*, applied to the widow and representative of *L.*, who took the pauper, received the parish money with him, and went with the pauper into the parish of *R.*, where she then lived, and where he continued with her about two or three years; when Mrs. *L.* intermarried with *S*, of the parish of *C.*, and there the apprentice continued with her for about three days, when the boy became a cripple, by losing of his feet: whereupon *S.* and his wife, about three months before the apprentice was discharged, sent the apprentice to *F.*, his original master (who knew of his being a cripple), and insisted on his receiving the pauper, when *F.* refused, until she promised to pay all the expence he should be at in taking care of the pauper; and then *F.* put the pauper to live with the pauper's grandmother, in the said parish of *K.*, at 1*s.* 6*d. per* week, where he resided seven weeks, when he was removed, having been first discharged by the Court of Sessions from his apprenticeship, after a residence of more than 40 days, for which *F.* paid her accordingly.—ASTON J. This is an apprentice in husbandry. *F.*, having another apprentice, applied to Mrs. *L.* to take him, agreeable to her covenant; she takes him with his consent, and takes the parish money, which, to be sure, looks like an assignment, but is not one; she, Mrs. *L.*, returns him back to the master, being then a cripple; it is not stated whether he did any service in either place; his residence in *K.* being with his master's privity and consent, is sufficient, although he did no service there. If the residence was not casual, which in this case it was not, it has been often said, that the labour and service of apprentices is the consideration of settlement; but that is not true in a thousand instances, it is the residence without any service that does it, if the master be privy and consenting to it. —WILLES and ASHHURST Js. of the same opinion.

If a master agree with his

566. Rex v. *Offerton* (*a*), *E. T.* 15 *G.* 3. *Burr. S. C.* 802. — The pauper was originally settled in the township of *H.*, in the parish

(*a*) But see Rex *v.* Inman, 4 B. & A. 55. where an apprentice bound for seven years to A. served him in his house between five and six years, and

of *M.* When of the age of 12 years, he was bound an apprentice, by the parish of *M.*, and the overseers of *H.*, to *R.*, a linen weaver in *H.*, for the term of seven years. The pauper was a party to and executed the indenture, which was allowed by two acting magistrates for the said county, pursuant to the statute. The pauper removed, with his master, out of the township of *H.* into the township of *S.*, a few days after the date and execution of the indenture. He served his said master five years and seven months in *S.*, under the indenture, and lodged at his master's house in *S.* during such time. He and his master then agreed, "that he, upon paying 12*d.* a week, and providing for himself, "should be at liberty to work for his own benefit during the "remainder of his apprenticeship term; that the master should "find him a loom for the remainder of his apprenticeship, which "he did; and that the master should receive the 12*d.* a week, as a "satisfaction for his service during the remainder of his appren-"ticeship." The pauper, at the time of making such agreement, was of the age of 18 years; and immediately after the same was concluded, he married, and left his master. Neither the churchwardens of *M.*, nor the overseers of *H.*, were acquainted or privy to the agreement being made, nor was the indenture cancelled or delivered up. The pauper afterwards resided, as master of a family, about five months, with his wife, in the township of *S.*; worked for his own benefit, and was not accountable to his master for what he earned; nor did his master provide him with the goods he worked up after such agreement was made; but the master provided him with a loom as aforesaid, and received the 1*s.* for several weeks, under the agreement from the pauper, whilst he resided at *S.* The pauper took a house, and removed with his family into the township of *O.*, which adjoins to the township of *S.*, about 12 months before the apprenticeship would have expired, and continued to reside in *O.* from that time till the order of removal. He worked for the same tradesman who employed the master; but such tradesman did not settle, nor any ways account with the master for the pauper's work or earning; but the master provided him with a loom, whilst he resided in *O.* During the time he resided in *O.* (which was for the remainder of the time under the indenture of apprenticeship, and near 12 months), he did not work with any other person, by the particular direction or consent of his said master, but received the profits and emoluments of his trade to his own use; but the master knew, during all that time, when and with whom the pauper was working; and the master applied, two different times, to the pauper, during the time that he so resided in *O.* (and before the time for which the weekly payments were to be made was expired), for money upon account of the further arrears of 12*d.* a week, due to him in pursuance of such agreement, but never received any money from the pauper after he removed into *O.*; though he often demanded it, and would have received it, if the pauper had been able to pay him;

apprentice to furnish him with a loom, and on receiving 1*s.* a week, permit him to work for himself, a service under this separation with another master in a different parish is a service under the indentures.

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afterwards for the remainder of the term resided in his mother's house, having agreed with his master, that he should be at liberty to work for whom he pleased, he paying 2*s.* *per* week to his master. The master also, during this time, occasionally gave him work to do for which he was not paid: Held, that this was not a continuance of the service to A for seven years under the indenture.

and often threatened him for not paying it.—THE COURT were of opinion, that the apprenticeship continued; that there was no dissolution of it, nor any intention to dissolve it. As between he original master and the apprentice, the master knew that the apprentice worked in *O.*, and demanded the 12*d.* a week for it: an apprentice may work in any parish with the consent of his master; and it is probable that the tradesman with whom he worked knew that he was an apprentice, for that tradesman employed the master. They held, therefore, that the service in *O.* was under the indenture of apprenticeship.

The mere knowledge of the first master that his apprentice is working with another master, does not imply his assent to such service.

567. *Rex* v. *Ideford*, *H. T.* 16 *G.* 3. *Burr. S. C.* 821.—The pauper, *M. S.*, was legally bound an apprentice, by the officers of *C.*, to *P. M.*, of that place, till 21 years or day of marriage; and lived with him there four years; when he assigned her, by parole, to *J. S.*, of *I.* aforesaid; with whom she lived seven months, when she ran away from *S.*, and returned to the parish of *C.*, and resided there for nine months, as a servant to *J. H.*, at a public house, with the knowledge, but without any express consent (*a*) of *M.* or *S.*: *H.* did not know that the pauper was an apprentice. *M.*, the original master, resided in *C.* during the time that the pauper lived with *H.*, and frequently saw her there; but during her residence there applied to *S.* to take her back to *I.*, and threatened to put him to trouble if he did not. The pauper, during the time she was at *C.* as aforesaid, was taken ill; and for part of the time was so ill in the workhouse that she could not be removed; and was then relieved by *S.* in the workhouse there. She never returned to *I.*; but continued, for the last two years of her apprenticeship in *C.*, in good health; where the apprenticeship expired.—LORD MANSFIELD: Here is no consent of the master, either express or implied; his *mere knowledge* of it does not imply his consent to it.—ASTON J. There must be the consent of the master, in order to the apprentice's gaining a settlement in another parish; and he cited *Rex* v. *Clapham*. (*b*)

(*a*) See Rex *v.* Bradninch, *post*, pl. 570.

(*b*) *Ante*, pl. 559.

The assent of the executors of the first master, to the service of the apprentice with a second master, is sufficient.

S. C. Cald. 60.

568. *Rex* v. *Stockland*, *H. T.* 19 *G.* 3. *Douglas*, 70.—The pauper was bound an apprentice in husbandry by the parish of *S.*, to *J. D.* of that parish, till he should be 24 years of age. He lived there four years, under that indenture, when the master died. He continued with his master's son, who was his executor, and had proved his will, for about seven years, in the same parish, when, being desirous of living with his uncle, in the parish of *O.*, to learn the trade of a miller, his uncle and he applied to the executor for his consent, who gave his consent accordingly, saying he would do any thing for the benefit of the pauper; and then the pauper made an agreement with his uncle for 1*s.* 6*d.* *per* week, and continued with him, in the whole, two years and a half: at the end of the first four months of which time the pauper attained his age of 24 years.—LORD MANSFIELD: Though an apprentice is not strictly assignable nor transmissible, yet if he continue with the consent of all parties and his own, it is a continuation of the apprenticeship. The case of *Bridgeford* (*c*) is much stronger than this.

(*c*) *Ante*, pl. 557.

The *express consent* by *parole* of a first master, to a

569. *Rex* v. *Langham*, *M. T.* 22 *G.* 3. *Cald.* 126.—*W. E.* was bound an apprentice to *B. S.*, of *L.*, by the overseers of the poor of *D.*, to serve till the age of 24 years; he remained in such service under the indentures four years and upwards, when *S.*

failed in his circumstances, and having no longer employment for him, told his apprentice that he might go to his father, *J. E.*, at *O.* Upon his going home, his father and grandfather applied to one *W. B.*, of *D.*, to take him for the remainder of the term; and his father then went to *S.*, who was at home and under confinement, and told his wife that he had got a new master for his son; upon which *S.*'s wife went up to her husband's chamber, and informed him that the father of the apprentice was come, and said to her that he had got a new master for his son, and desired the indenture might be given up: upon which *S.* gave the indenture to his wife, who delivered it up to the apprentice's father, *S.*, having first made crosses upon the indenture, as a token that he had resigned up the indenture and the apprentice. At this time the pauper was under age. Soon after, *B.* went to *S.* to ask him, whether he was willing to resign up his apprentice, and to turn him over, as he was going to take him apprentice, if he, *S.*, was willing; and *B.* told him, *S.*, that the apprentice was bare of clothes, and if the father would clothe him, he would take him. *B.* further said to *S.*, "If things came about, he hoped he, *S.*, "would never fetch him again:" to which *S.* replied, he never would; and *B.* then told him there was no occasion for a deal of trouble in turning him over, if he, *S.*, would be honest; and upon this *S.* assured him he never would fetch his apprentice away; and *B.* then declared, that "if we have an agreement "drawn to our satisfaction, it will be better than having so "much trouble about it:" and *B.* immediately went away satisfied that he might keep the apprentice as a turn-over. The apprentice staid with *B.* three years and a half by virtue of the above transaction, and an agreement entered into for that purpose between *J. E.*, the father of the apprentice, and the new master, *B.*; which agreement was made in the presence of the apprentice, but he was no party to it; and the parish-officers of *D.* were perfect strangers to it. The new master kept the agreement and the original indenture. At the time the indenture was delivered up to the pauper's father, *S.* considered the pauper perfectly at liberty; and his indenture was so given up, that he might make any fresh agreement, and looked upon him to be quite at large. — LORD MANSFIELD: There is no difficulty in this case. The indenture continues in force; and the only question is, Whether the service of the second was with the consent of the first master? for, if so, it is a service under the indenture. Of this there can be no doubt, for he consents expressly; he cancels the indenture, and directs it to be delivered to the father of the infant apprentice, who came to him for the purpose of this assignment: and he undertakes to the second master that he would not reclaim him. — ASHHURST J. This differs from the case cited; for there the original master knew nothing of his apprentice, or with whom he worked: here is an express consent to the particular service. — BULLER J. This distinction, that an express and explicit leave and consent by the master of an apprentice to the particular subsequent service is a requisite not to be dispensed with, was taken in *Rex* v. *Austrey* (*a*); and again in a later case. — WILLES, J. concurring, rule absolute, and both orders quashed.

service with a second master, is, for the purpose of settlement, *a legal assignment* of an apprentice.

(*a*) *Ante*, pl. 561.

The consent of the first master may be implied from circumstances. S. C. Cald. 461.

570. *Rex* v. *Bradninch*, *T. T.* 21 *G.* 3. EDITOR's *MSS.* — The pauper, *R. M.*, who was born in *B.*, and bound apprentice by that parish to *C. H.* until he should attain the age of 24 years. He continued to live with his master until he had attained the age of 22, when the master agreed that if he would give him 1*l.* 1*s.* in hand, and 2*l.* 2*s.* more, being 1*l.* 1*s.* a year, during the continuance of his apprenticeship, he should go and serve where he pleased. But the master said he should not deliver the indenture, nor discharge him from his apprenticeship, for he considered him as his apprentice still. The pauper agreed to this, and paid his master 1*l.* 1*s.* in hand, and went into the parish of *G.*, and lived with his father, and paid him 6*d.* a week for his lodging. He hired himself as a labourer to Miss *S.* by the day, and continued to lodge with his father and serve Miss *S.* till the expiration of his apprenticeship. At the end of the first year of his serving Miss *S.*, he went to his master, *H.*, and paid him 1*l.* 1*s.* for that year, according to the agreement. His master said, "You continue to work for "Miss *S.*? I think it is a very good place, and hope you will "continue in it." At the end of the second year, he went and paid his master the other 1*l.* 1*s.*, when he said, "You still con- "tinue to work with Miss *S.*?" He replied, "he did;" when his master said he would look out for the indenture and give it him. The pauper did not know that there was any conversation between the master and Miss *S.* respecting the apprenticeship; but Miss *S.* knew he was an apprentice, and had inquired his character. — The SESSIONS held, that the pauper gained no settlement in *G.*, and confirmed the order removing him to *B.* — Mr. CLAPP showed cause. All the cases in which an apprentice has been held to gain a settlement by serving under the indenture with another person, require an express consent by the first master. A general leave is not sufficient. If the leave in this case has any effect, it must be to dissolve the apprenticeship; for the master could not recall it: he cited *Rex* v. *St. Mary Kallendar* (*a*), *Rex* v. *Austrey* (*b*), *Rex* v. *St. Luke's* (*c*), and *Rex* v. *Ideford.* (*d*) — Mr. MORRIS, *contrà*, said, it was certainly true that the master must have notice of the service with another, and must consent to it; but that both circumstances appeared here, and he relied on *Rex* v. *Offerton* (*e*), as very much in point. — LORD MANSFIELD. There can be no doubt in this case. The pauper was certainly not *sui juris*, for if he had been so he would not have paid 1*l.* 1*s.* a year. — BULLER J. The distinction was taken in *Rex* v. *Offerton*, in which I was counsel; and I remember a case of *Rex* v. *Buckington* (*g*), which was very applicable. In *Rex* v. *Ideford* it was stated, that the master did not consent. — Order quashed.

(*a*) *Ante*, pl. 540.
(*b*) *Ante*, pl. 561.
(*c*) *Ante*, pl. 562.
(*d*) *Ante*, pl. 567.
(*e*) *Ante*, pl. 566.
(*g*) *Ante*, pl. 539.

The consent of the first master to a subsequent service is sufficiently expressed by his giving the pauper a character, with a view to induce the second master to take him.

571. *Rex* v. *St. Mary, Lambeth*, *T. T.* 25 *G.* 3. EDITOR's *MSS.* — *G.*, otherwise *M.*, was removed from *St. M. L.* to *St. S.* THE SESSIONS quashed the order, and stated, that on the 16th of *March* 1781 the pauper was bound apprentice by indentures for *five years* to *C.*, of *St. B.*, with whom she continued a year and a half, when, having staid out all night, on her return *C.* and his wife told her she was no longer their apprentice, and might go and look for another place, and gave her money to go to a register-office to look for a place. After this she continued a week with her said master, when, hearing of a place, she agreed to hire herself as a servant to *H.*, of the parish of *St. S.*, at 2*l.* a year.

H. came to *C.* and inquired her character; which turning out satisfactory, he hired her on the above terms: in this service she continued to live nine months in the parish of *St. S.* The pauper at this time was under 21 years of age; but when she left *C.* the indentures were not delivered up nor cancelled; but Mrs. *C.* told her the indentures were destroyed. This was not true as to both parts, one of them having been read in evidence. The pauper afterwards went to a friend's house at *L.*, where she lived on charity, but not as a servant; from thence she hired herself as a servant to *L.* of *St. S. W.*, at 5*l. per annum*, without the knowledge of *C.*, where she lived three months. During this service, she visited Mrs. *C.*, her first mistress, and acquainted her where she was; who said she was glad of it. — BEARCROFT showed cause, and contended, 1st, That no settlement was gained by the service in *St. S.*'s. 2dly, Admitting there was a service gained in *St. S.*'s, that a subsequent settlement was gained in *St. S. W.* It is true that the indentures continued to subsist; but it must be shown that the service was performed under them *tanquam* apprentice; in order to which it is necessary to show an assignment from the first master, or some act amounting to an assignment: mere knowledge of the master is not sufficient; but there must be a consent on his part which implies that he still considers himself as master; but in the opinion of this man the apprenticeship was at an end, so that he could not consent to the continuance of service under it. It is not found that the master, when he gave the character, knew the purpose of the inquiry, or that the pauper was hired. There must be a consent to the particular service; a general consent to go into the world, and get a service any where, will not do; if it would, the general consent would go also to the subsequent service in *St. S. W.* The hiring, indeed, was without the knowledge of *C.*, but so was the hiring in *St. S.*'s, and there is the knowledge of Mrs. *C.* afterwards and her approbation. They cited and observed upon *Rex* v. *Allhallows* (*a*), *Rex* v. *St. George's, Hanover-Square* (*b*), *Rex* v. *Fremington* (*c*), *Rex* v. *Tavistock* (*d*), *Rex* v. *Offerton* (*e*), *Rex* v. *Austrey* (*g*), *Rex* v. *St. Luke's* (*h*), and *Rex* v. *Notton* (*i*). — LORD MANSFIELD: The indentures are not cancelled; they subsist; and the power over the servant continues: then the question is, Whether the master consented? The character was *as servant*. — BULLER J. mentioned the case of *Rex* v. *Ideford* (*k*) as directly in point. It is absurd to say that the inquiry about the pauper's character was merely from general curiosity. It was evident with a view to service; and the giving the character with that view was a consent. — Order of Sessions quashed.

S. C. Cald. 533.

(*a*) *Ante*, pl. 555.
(*b*) *Ante*, pl. 556.
(*c*) *Ante*, pl. 560.
(*d*) *Ante*, pl. 563.
(*e*) *Ante*, pl. 566.
(*g*) *Ante*, pl. 561.
(*h*) *Ante*, pl. 562.
(*i*) *Ante*, pl. 564.
(*k*) *Ante*, pl. 567.

572. *Rex* v. *Sandford*, *T. T.* 26 *G.* 3. 1 *T. R.* 281. — The pauper was legally settled in *B.* by birth, and was bound an apprentice by the officers of that parish, at the age of 11 years, to serve *S.* of that place till 24: he lived with *S.* for five years, when his master gave him up his indenture, and recommended him to live with *V.*, of the parish of *C.*, thatcher, with whom the apprentice made an agreement as a servant for three years. While he was with *V.*, *S.* had a conversation with *V.*, and desired him to keep back some of the pauper's wages to provide him with clothes, apprehending that otherwise he would come upon him: about the expiration of that time he returned to *B.*, (where his master *S.*

But if the first master *give up the indentures* to the apprentice, his consent that he shall serve a second master will not make such service, a service under the indentures.

then resided,) and lived there with one *T.*, a butcher, with his master's knowledge, who frequently conversed with *T.* while the pauper lived with him, but not on the subject of his apprenticeship: after the pauper had lived with *T.* three months, he came back to *S.*'s house, and lived with him for a month, paying his master 6*d.* a week for his lodgings. — LORD MANSFIELD C. J. It seems to me clear that the pauper could not gain a settlement after the first five years, under the indentures as an apprentice, because neither party, in fact, considered the service as such; they considered the indentures as given up, and put an end to for ever; so that the service was not, nor was intended to be, in the capacity of an apprentice: neither did the pauper gain a settlement as a servant, because there could not be such a service, in point of law, during the existence of the indentures: so that though in reality there was a service in point of fact, yet it cannot be applied to the purpose of gaining a settlement, because, in point of law, the indentures still subsisted. — WILLES J. The pauper could not gain a settlement in *C.*, because the apprenticeship was not dissolved; for, being a minor, he could not agree to the discharge of the indentures without the consent of the parish officers. And as to the other point, it has been determined in *Rex* v. *Lowess* (*a*), and in *Rex* v. *Hulland* (*b*), that the latter part of the service may be joined to the former. — ASHHURST J. In the case of *Rex* v. *Fremington* (*c*), the question of alternate residence was not entered into. Setting that point, therefore, out of the question, the service in this case with the second master in *C.* cannot give the pauper a settlement, because the indentures of apprenticeship were not dissolved in point of law; and, therefore, though the parties acted under a mistake of the law, yet, as it was not in fact intended between them that the pauper should serve under the indentures, we cannot so consider it. And, on the other hand, he cannot be considered as serving under a hiring, because the indentures still subsisted in point of law. — BULLER J. The case does not come up to the fact which the counsel supposed; for it is manifest, that when the indentures were given up by the master to the apprentice, he was left at liberty to do whatever he pleased. It is true that the master recommended him to another person, but it was a mere recommendation, which the pauper might have rejected or not, as he pleased. He might have gone into the service of any other master. His first master made no particular agreement with *V.* In the same manner, the other hiring and service was without the consent and concurrence of the original master: during the whole period the apprentice was at liberty to have hired himself to whom he pleased. The fact, therefore, of consent to any particular service by no means appears. On the other hand, the pauper, being under age, could not consent to cancel the indentures; so that though there was a service in fact, yet, in point of law, no settlement could be gained under it. I also agree with my brother WILLES that the settlement was in *B.*, upon the second ground, that the latter part of the service is to be connected with the former.

(*a*) *Ante*, pl. 220.
(*b*) *Ante*, pl. 407.
(*c*) *Ante*, pl. 560.

The consent of the first master may be given after the service

573. *Rex* v. *Bradstone*, *H. T.* 27 *G.* 3. EDITOR'S *MSS.* — Two justices removed *D.* and his wife from *L.* to *B.* THE SESSIONS, on appeal, confirmed the order, and stated the following case: — Upon the examination of the pauper, *D.*, it appeared that he was

bound apprentice by the churchwardens and overseers of the parish of *P.* to *L.*, of *L.*; that *L.* duly assigned him by indenture to *W.*, of *B.*, with whom he continued till he was 20 years of age: at this period, *W.* and the pauper having some dispute, agreed to part, and *W.* gave the pauper a permission in writing, signifying that he was at liberty, and had his consent to serve any other master. The pauper then left *W.*, and hired himself to *T.*, of *B.*, for one year. He served the year, and received his wages, and then married, and went to live in *Llandulph*, where he has since resided. During the time that he lived in *B.* with *T.*, he frequently saw *W.*, who knew that he was in the service of *T.*; but *W.* had never given any particular consent to this service with *T.*, or to his serving any particular person; but he told him at parting, that he would think no more of him. It also appeared, on the examination of *T.*, that the pauper had hired himself to him for one year, for 6*l.* 10*s.* a year, and served out his year; that he was then 21 years of age, and the time of his apprenticeship not expired; that when the pauper had been in his service eight months, he, *T.*, met *W.* by accident, who said, "I find you have an apprentice of mine." To which *T.* answered, "I do not know I have." And that *W.* then said, "*D.* is my apprentice, but you are welcome to keep "him as long as you please, and may have his indentures when "you please; for I shall think no more of him." The pauper continued in his service with *T.* four months after this conversation passed; and at the expiration of his year he received the full year's wages. — THE COURT being of opinion that this conversation was a sufficient consent on the part of *W.* to the service of his apprentice with *T.* under the indentures, both the orders were quashed without argument.

with the second master has commenced.

574. *Rex* v. *The Holy Trinity in the Minories, E. T.* 30 *G.* 3. 3 *T. R.* 605. — The pauper was bound apprentice by indenture to *G.* of *T.*, (being a place neither within the parish of the appellants or respondents,) to serve for seven years. He served his master about six years of the term; when his master declined business, and informed the pauper that he wished him to get another master for his good. The pauper then went home to his father, who lived in *St. O.*, with whom he staid three or four weeks; and if he could have got a service in that time he would have taken it; but not meeting with any he returned to *G.*, who thereupon told him, that he heard *E.*, a tailor, in *H. T.*, wanted a man; and told him to go to *E.*, and make an agreement with him for his (the pauper's) good; and that he understood *E.* would take him for 12 months. The pauper accordingly went to *E.*, and entered into an agreement in writing, under seal, with him, covenanting to serve him for 12 calendar months from the 11th of *July* 1768, in his business of a tailor; and *E.* thereby agreed to instruct him in that business, and find him in victuals, drink, and lodging, and at the end of the term to pay him 12*l.* in consideration of his service. The agreement was not stamped. The pauper was 19 years of age when he left *G.*; and the indentures were not assigned, or cancelled; but after he had served *E.* two months, *G.* gave him up his indentures; and he continued to serve and board with *E.* to the end of the term agreed, and then received his wages, and applied them to his own use. The question was, Whether he gained a settlement by his service with *E.* in the *H. T.*? — LORD

If an apprentice's first master give him leave to get another master, and *recommend* him to a *particular person* in the same trade, and make an agreement with him accordingly: a service with such second master for *two months* previous to the first master's delivering up the indentures, gains a settlement.

KENYON C. J. It is extremely clear, that while the indentures of apprenticeship continued in force, the apprentice was not *sui juris*, and could not gain a settlement as a service. But it has been settled as long ago as the beginning of the late reign, in *Rex* v. *St. George, Hanover Square* (a), that the apprentice need not continue in the actual service of the first master during the whole term, but that if he be assigned over by the first master, or continue with his privity and consent in the service of another person, he may gain a settlement by serving the second master 40 days. The cases which have been decided upon this subject have been determined on nice distinctions; but still those distinctions ought to be adhered to, as they have settled the boundaries on this point. The one is the case of *Rex* v. *Fremington* (b), where it was held, that the apprentice gained a settlement by serving the second master with the consent of the first. The case on the other side is that of *Rex* v. *St. Luke's, Middlesex* (c), where a general licence given by the master to the apprentice to serve whom he would, without any consent to serve any person in particular, was held insufficient to enable the apprentice to gain a settlement by serving such second master. Now this case falls within the principle of the former of those; for the apprentice went not only with the consent, but with the express recommendation of the first master to serve the second, and he went there to follow the same trade which his first master had exercised. It has been said, that this case must be governed by that of *Rex* v. *Sandford* (d); but there is a solid distinction between that case and the present; for there the master gave up the indentures previous to the pauper's entering into the second service, but here the indentures were not given up till more than 40 days had elapsed after the apprentice had served the second master; and that is sufficient to give him a settlement in that parish. Supposing this question were to arise in another shape, and that the pauper were prosecuted for exercising his trade without having served an apprenticeship according to the statute, there is no doubt but that the service with the second master would be deemed a service under the indentures previous to the time of their being delivered up. — ASHHURST J. declared himself of the same opinion. — BULLER J. The pauper could gain no settlement by living as a hired servant with *E.*, because the indentures of apprenticeship still existed; and the only question is, Whether the master did expressly consent to that service or not? for all the cases show that mere knowledge is not sufficient; knowledge does not imply consent. Now here was an express consent and recommendation of the first master to serve the second, and then the case comes precisely within that of *Rex* v. *Fremington*. If, indeed, the apprentice had not gone into *E.*'s service, he would not have gained a settlement by serving any other person, because a general licence to serve whom the apprentice chooses is not sufficient. By going into the service of any other person, the apprentice would have gone without the express consent of the first master, and, therefore, might have been recalled by such master; but he could not have been recalled by the first master from the service of *E.*, because of the express consent to serve *E.* This is distinguishable from *Rex* v. *Sandford*; for there the master had given up the indentures, and he had no longer any power over the servant; but here the indentures were in force during the first two months of the pauper's

(a) *Ante*, pl. 566.
(b) *Ante*, pl. 560.
(c) *Ante*, pl. 562.
(d) *Ante*, pl. 528.

vice with *E.* — GROSE J. It is necessary to adhere to the dged cases; and I think that this case must be governed by t of *Rex* v. *Fremington;* and that case also shows, that the vice with the second master need not be for the benefit of the . With respect to the case of *Rex* v. *Sandford*, the proper wer has been already given, and the distinction between that e and the present is sufficiently clear. In this case the inden- es were not given up till after the 40 days' service with the ond master, which was sufficient to give the apprentice a settle- nt by serving *E.* with the consent of the first master: and the umstance of the indentures not being given up till that time, ier shows that the first master intended that the service should tinue during that time under the indentures.

575. *Rex* v. *St. Paul's, Bedford, M. T.* 36 *G.* 3. 6 *T. R.* 452. — the 29th *December* 1777, the pauper was bound apprentice seven years to *R.* of *K.*, cordwainer, and a fee of 15*l.* was paid he master by the trustees of the *Bedford* charity. The pauper ved *R.* in *K.* till *October* 1782, when they removed together to parish of *B.*, where the apprentice continued till the death of master, on the 10th of *October* 1783. On the 24th of *November* owing an agreement was entered into between *N.*, the executrix *R.*, and *J. R.*, and endorsed on the indenture, by which *N.* gned over the apprentice to *J. R.* for the remainder of the n, and *R.* agreed to teach the apprentice the same trade, and provide him with board and lodging till the end of the term. is agreement was signed by *N.* and *J. R.*, but not stamped. mediately after the assignment the pauper went into the service of *R.* in *K.*, and continued to reside there without interruption till *ember* 1784.—LORD KENYON C. J. The question here is a ques- n on evidence, whether the executrix of the master did or did consent to the service with the second master: the Court of sions were of opinion that the instrument which was produced prove that consent could not be received in evidence, because as not stamped; and, therefore, it becomes necessary to con- er how far the statute 23 *G.* 3. *c.* 58. affects this case. By that all agreements are to be stamped, except such as fall within r of the exceptions mentioned in the fourth clause. It is said t this person comes within some one of the descriptions there ntioned; but he was not a *servant;* he had acquired another cific denomination, well known in the law, an *apprentice.* The ception clearly refers to cases where there is a *hiring;* but it was not the present case; "hiring" is not applicable with y propriety to the case of an apprentice. Apprentices and vants are characters perfectly distinct; the one receives in- uction, the other a stipulated price for his labour. I think, refore, that we should be doing violence to this act to deter- ne that an apprentice comes within the terms in this clause of ception; and, consequently, the Sessions did right to reject this trument. — And the rest of THE COURT were of the same inion.

If the consent of the executrix of the first master be *in writing*, it must be stamped as *an agreement* to render the service with the second master effectual.

576. *Rex* v. *Crediton, M. T.* 41 *G.* 3. 1 *East*, 59. — The pauper s bound apprentice to *M.*, whom he served above 40 days in parish of *C. M.* failing in business, told the pauper he had employment for him, and he might go where he pleased. terwards, and before leaving his master, one *H.* came to inform

Where the master of an apprentice told him "that he had no further employment for

him and he might go where he pleased," and the apprentice hearing of another master was going to him, and being met by his original master, and asked where he was going, answered that he was going to *U.*, to which the master replied, "*he might go there or where he pleased:*" Held, this was not such a particular assent of the original master to the service with *U.* as would enable the apprentice thereby to gain a settlement, though the indentures were not delivered up or cancelled.

(*a*) *Ante*, pl. 556.

(*b*) *Ante*, pl. 561.

the pauper that one *U.*, who wanted a boy, was at an inn in the neighbourhood of his master's house, and that he should go to the inn. As the pauper was going out of the house, his master met him and asked him, where he was going? The pauper told him he was going down to *U.* *M.* said, "he might go there or "where he pleased." Thereupon the pauper left *M.*'s house, and went and hired himself, and lived with *U.* above 40 days in the parish of *S.*, but no communication appeared to have taken place between the original master and *U.* — LORD KENYON C. J. The service with *U.* was not a prosecution of the service of the original master. Some of the cases upon this subject have been carried to a greater degree of refinement than might be desirable if they were to be decided again *de novo;* but we are to be governed by the general principle resulting from them, and not by particular expressions which vary in every case. It would, perhaps, have been better to have confined the power of gaining a settlement to a service with the original master. The case of *Rex* v. *St. George's, Hanover Square* (*a*), first broke in upon that line, and determined that an apprentice serving another by the consent of the original master might thereby gain a settlement: from thence has ensued such a train of decisions as it is difficult to follow; however the general principle of them all is to be found in *Rex* v. *Austrey* (*b*), where *Lord Mansfield* said, that, in order to gain a settlement by the apprentice serving another master, there must be "an express and explicit leave and consent given "by the master to the particular service," so as to be considered as "a service of his master under the indenture;" and not, as he observed in that case, "a leave intended to be quite general;" or as here, a general quitting of the service and leave to go where the pauper pleased. Here the master first tells the pauper he had no longer any employment for him, and he might go where he pleased, and then somebody having sent for the pauper, he tells his master, on being asked where he is going, that he is going to *U.*, on which the master repeats in effect what he had before said, that he might go there or where he pleased; meaning that he no longer looked for his service, or took any concern how he disposed of himself. — GROSE J. There must be a particular consent of the original master to the service with another in order to give a settlement. In the case of *Rex* v. *The Holy Trinity in the Minories* there was a particular recommendation to a particular service, which the Court held sufficient for that purpose. Whether there be such a particular assent of the original master to the subsequent service is more a question of fact than of law (*c*), and here the Sessions have in effect negatived that fact by finding that the pauper gained no settlement by the service with the second master. — The other judges agreed that the conversation stated did not import an assent by the master to the particular service; but was, in effect, no more than repeating what he had at first said, that he had no further occasion for the pauper, and he might go where he pleased. — Order of Sessions confirmed.

(*c*) *Vide* Rex *v.* Shebbear, *infra.*

An apprentice offered his master a guinea "to let him off," to which

577. *Rex* v. *Shebbear, M. T.* 41 *G.* 3. 1 *East*, 73. — The pauper was bound at seven years of age by a parish indenture to *T.* of *B.* till the age of 24. *T.* assigned the apprentice seven years afterwards to *S.* of the same parish, with whom he lived there till *Lady-day* 1780, when two months were wanting of the expiration of the

apprenticeship. He then proposed to *S.* to let him off the remainder of his time, which he at first refused to do: the pauper then offered to give *S.* 1*l.* 1*s.* if he would let him off, which *S.* agreed to do, and also to give him a new suit of clothes when the 1*l.* 1*s.* was paid. The 1*l.* 1*s.* was not paid to *S.*; nor did *S.* give the pauper the clothes: nor were the indentures given up or cancelled. On the morning of *Lady-day* above mentioned the pauper went away and offered to serve one *Brent*, who refused to employ him, conceiving him to be an apprentice. The same day he went to one *Battishill* a blacksmith in *S.*, who said he would not take him without *S.*'s consent. The pauper then went to *S.* and told him what *Battishill* had said: *S.* then replied, "You may "go with all my heart, I think it will be a good thing for you to "learn the trade." On his telling *Battishill* what *S.* had said, *Battishill* agreed with him; and he lived with him in *Shebbear* for the last 40 days and upwards before he attained the age of 24. — LORD KENYON C. J. This case is very distinguishable from that of *Rex* v. *Crediton* (*a*), which we decided a few days ago: and upon the same ground on which we there held that no settlement had been gained as an apprentice by the subsequent service, I think it is as clear that the Sessions have drawn the right conclusion in this case in adjudging that a settlement was gained by the service with the second master. There is no doubt but that the indentures still subsisted in point of law, not having been delivered up or cancelled, or any consideration paid for doing so. In the former case we were satisfied that the master did not really mean to give a particular assent to the second service: he had there told the apprentice to go where he pleased, having no further occasion for him; and when the apprentice told him where he was going, he answered that he might go there or any where else. But here the master was applied to for his consent to the particular person named; and he expressed his approbation of the apprentice going there, telling him that it would be advantageous to him to learn the trade. This, then, was not an indiscriminate leave to serve any person, but a particular consent to a particular service; and this is the plain line of distinction between all the cases; which it is to be hoped will make an end of all such questions in future. Perhaps it would have been more correct for the Sessions to have found the fact of such particular consent, instead of only finding the evidence of it, as they have done. And if any thing were likely to turn upon it in this case it should be sent down to them again to find that fact. But I do not know what advantage could accrue from thence to the respondents, for, in effect, the Sessions have drawn that conclusion, and upon these premises I do not see how they could have drawn any other. — GROSE J. I am decidedly against sending this case down again to the Sessions, the only consequence of which would be to enhance expence: for I think that they clearly meant to find the fact of the original master's consent to the second service, and by their adjudication they have, in effect, found that fact. I have reconsidered what I said the other day in *Rex* v. *Crediton*, and am satisfied that it is right; namely, that whether there be a consent to a particular service or not is properly a question of fact for the Sessions to determine. In the former case they virtually negatived the consent, as here they have found it; and I think the evidence

the master agreed, and was also to give him a suit of clothes when the guinea was paid, but the indentures were not delivered up or cancelled. The guinea not being paid, the indentures still subsisted in law, and a settlement may be gained by serving another master with the consent of the first. The sessions ought properly to find the fact of such consent, and not merely evidence of it: but having found that on application by the apprentice to his original master for leave to serve one *B.* (who would not take him without) the master said, "he might go with all his heart, and that it would be a good thing for him to learn the trade;" this was holden sufficient evidence to warrant the conclusion of the Sessions that the original master had consented to the particular service.

(*a*) *Ante*, pl. 576.

warrants their conclusion. — LE BLANC J. The Sessions having stated the fact, and drawn their conclusion, is equivalent to their having expressly found an assent by the original master to the particular service with *Battishill.* — Order of Sessions confirmed. (*a*)

The pauper, an apprentice, being about to marry, told his master, that he wished to provide and work for himself, to which the master consented, and said he might do the best he could for himself; but nothing was said about the indentures, and they were not, in fact, delivered up or cancelled; the pauper afterwards engaged to work with another master, who told the original master that he had got the pauper at work, to which the original master answered, "I am glad of it, he was a bad lad, and I could make nothing of him:" Held, this was not such a consent to the particular service as would confer a settlement in the parish where the pauper then lived with the second master.

578. *Rex* v. *St. Helen, Stonegate, H. T.* 41 *G.* 3. 1 *East*, 285. — The pauper, on the 1st of *January* 1786, was bound apprentice for seven years to *M.* of *T.*, bricklayer, with the consent of his brother *C.*, his father and mother being then dead. The pauper continued with *M.* three years and upwards at *T.*, and then ran away. *C.*, his brother, went back with the pauper to *T.* to settle matters between him and his master for resuming the service, which could not be effected; but the pauper was assigned by parol to *C.*, with whom he afterwards lodged about three years, (except during the absence of a few months with *C.*'s consent,) and in the last two years of that time slept in the parish of *St. H.* During the time he was with *C.* the pauper worked under his authority, and generally along with him, for several masters, (*C.* being a journeyman bricklayer during the whole term of the indenture.) The pauper's wages were received and applied by *C.* towards his maintenance, the pauper being bad of sight and earning but little; and, among other masters, they worked both together for *T. P.* during three months, commencing from *November* 1789. About *March* 1792, the pauper, being about to marry, applied to *C.*, and told him he wished to work and provide for himself; to which *C.* consented, and said he might do the best he could for himself, and did not afterwards consider the pauper as his apprentice; but the indenture was neither delivered up nor cancelled, nor anything said respecting it. In the same month, and about three quarters of a year before the expiration of the term of the apprenticeship, the pauper applied for work to the said *T. P.*, who employed him in bricklayers' work and paid him weekly wages. About a month after he had so employed the pauper, *T. P.* met with *C.* and told him he had got his brother at work, to which *C.* replied, "I am glad of it; he was a bad lad, "and I could make nothing of him." The pauper continued to work with *T. P.* for five months after this conversation, and during the last three months of that time slept in the parish of *St. J.*, which, it was contended on the part of the appellants, discharged the prior settlement (if any) in *St. H.* The indenture was not given up by *C.* to the pauper till after the time expired, and was produced uncancelled at the hearing of this appeal. — THE COURT said, that this case was governed by the decision in *Rex* v. *Crediton* (*b*), which was expressly in point. — Order of Sessions confirmed.

A parish apprentice, who was bound by her original master to another master by a new indenture of apprenticeship, without reference to, or recognition of, the original in-

579. *Rex* v. *Christowe, E. T.* 49 *G.* 3. 11 *East*, 95. — Removal from *M.* to *C.*, order confirmed, subject, &c. The pauper, *E. P.*, being settled at *C.*, at the age of seven years was bound apprentice, by the parish of *C.*, to *P.*, with whom she lived there till she was 11 years old. A written paper was then executed, purporting to be an assignment of the pauper by *P.* to *S.*, then of the same parish, and after the execution of this paper she lived with *S.* in *H.* for several years, till her apprenticeship expired. The following is a copy of the said written paper, legally stamped: "This "indenture made, &c. between *E. P.* and *W. P.*, of the one part;

(*a*) *Vide* Rex *v.* Chipping Warden, *ante*, pl. 550. (*b*) *Ante*, pl 576.

" and *J. S.*, of the other part; witnesseth, that the aforesaid " *W. P.*, together with the consent and approbation of the said " *E. P.*, doth put and bind the said *E. P.*, and by these presents " hath put and bound the said *E. P.* apprentice unto, and with " the aforesaid *J. S.*, with him, after the manner of an apprentice, " to dwell, serve, and abide, from the day of the date hereof, until " she be full 21 years of age; during all which term the said " apprentice her master shall faithfully serve, &c. (and so it pro- " ceeded, in the common form of an indenture of apprenticeship); " and the said *J. S.*, master of the said apprentice, for, and in " consideration of the sum of *5l.* 10*s.* to him in hand paid, &c. " doth, by these presents, for himself, his executors, &c. covenant " with the said *W. P.* and *E. P.*, to teach and instruct, &c." (Signed, &c. by the parties, and the receipt of the *5l.* 10*s.* &c. indorsed on the back.) The question reserved for the opinion of the Court was, Whether this paper, (being admitted to be bad as an assignment,) could be received as evidence of the first master's consent to the pauper's living with the second master? Against the order of Sessions, EAST cited *Rex* v. *St. George's, Hanover Square* (*a*), *Rex* v. *Tavistock* (*b*), *Rex* v. *St. Petrox* (*c*), *Rex* v. *Clapham* (*d*), and *Castor* v. *Aicles* (*e*), as cases in which parish-apprentices were assigned in fact, but without proper authority, who nevertheless gained settlements by serving the masters to whom they were so assigned, as serving them by the consent of the original masters, and contended that this case fell within the same rule. — LORD ELLENBOROUGH C. J. This instrument purports to be a new and original binding of an apprentice, by indenture, by *P.* to *S.*; it does not recognize or refer to the original indenture of apprenticeship, as being an assisgnment of the apprentice under that indenture; nor does *P.?* thereby assume to have any right to assent to the apprentice serving another master under any other former indenture, but only to bind her *de novo*. How then can I say that this was a consent on his part that she should serve *S.* as a continuation of the relation of apprenticeship which she had contracted before with him *P.?* This would be to intend a consent contrary to what appears upon the face of the instrument to have been the intention of the contracting parties. I should be sorry to overturn the decided cases, but it appears to me that this is distinguishable from them; and that there is no case where the first master affected to bind his apprentice to another *de novo* by an original indenture, in which his consent to a service, as under the former binding, has been inferred, and therefore, without disturbing those cases, but leaving them as we find them, I do not think that this instrument proved the consent of *P.* to the service with *S.*, under the original binding. — GROSE J. assented. — LE BLANC J. The leaning of the former decisions was to support every case of settlement by implying the assent of the first master to the service with the subsequent master; but then it must be a consent to the service with the new master under a recognition of the original binding; and there is no case where the settlement has been held to be gained under an entirely new binding by an indenture of apprenticeship; and if we were to hold this to be sufficient, it would be carrying the doctrine of constructive assent to a service under the original binding further than any of the former cases. — BAYLEY J. In this case the apprentice never undertook

denture, which still subsisted in law, does not gain a settlement by serving her new master, as upon a constructive service of the original master under the first indenture.

(*a*) *Ante*, pl. 556.
(*b*) *Ante*, pl. 563.
(*c*) *Ante*, pl. 558.
(*d*) *Ante*, pl. 559.
(*e*) *Ante*, vol. i. pl. 692.

to serve the second master upon the terms of the original indenture of apprenticeship to the first master, nor did the first master consent to any such service. — Orders confirmed.

Where J. G. was bound apprentice in 1764, in C., and upon the death of his master in 1769, was assigned by the widow by indorsement on the indenture, whereby *she acquitted and assigned over her apprentice*, J. G., for all the remainder of his apprenticeship, and J. G. served under such assignment in K., which, for the last seven years, had regularly relieved the family of J. G. whilst residing in another parish: Held, that this was evidence from which the Sessions ought to have presumed that the widow was executrix, and capable of assigning the apprentice, and that J. G. had acquired a settlement in K., and the Sessions having drawn a contrary conclusion, this Court quashed the order of Sessions.

580. *Rex* v. *Barnsley*, *E. T.* 53 *G.* 3. 1 *M.* & *S.* 377. — Removal from *B.* to *K.*—Order quashed, subject, &c. — *J. G.* the father of the pauper, was bound apprentice by indenture, dated *Dec.* 1, 1764, to *T. H.* of *C.*, for seven years, and served five years, until his master died, when, in consideration of 3*l.* 3*s.* paid by *W. B.*, he was assigned by *E. H.* (widow of the said *T. H.*) by an unstamped indorsement on the indenture, for the remainder of his term, in the words following: "*April* 14, 1769. Be it remembered, that I, *E. H.*, of *C.*, do acquit and assign over my apprentice, *J. G.*, for all the remainder of his said apprenticeship, unto *W. B.*, of *K.* Signed *E. H.*, *W. B.*" No evidence was offered to show that *E. H.* was either the executrix or administratrix of her husband *T. H.* *J. G.* went to and served *W. B.* as his apprentice, in *K.*, till the expiration of his indenture. *J. G.*'s family, for the last seven years, has been regularly relieved by *K.*, although residing in another parish. The pauper has not done any act to gain a settlement for himself.— LORD ELLENBOROUGH C.J. The only doubt is, whether where the Sessions have drawn a conclusion palpably erroneous upon two points, we should send the case down again, or, in ease of the parties, draw the irresistible conclusion ourselves. The relief given by the parish of *K.* to the family of *J. G.* for seven years, is evidence of such preponderating weight, that I should think any judge would direct a jury to find upon such evidence, (supposing the question legally to come before them) that *G.* was, by some means or other, a settled inhabitant of the parish. It does not indeed amount to an estoppel; but it is cogent evidence against the parish. The Sessions also ought to have drawn a different conclusion on the other point. The assignment (which, it is admitted, was not required at the time to be stamped) is in its form an assignment by the widow, "as my apprentice," and at this distance of time, we will presume, if necessary, that she was lawful executrix; or even if she were executrix of her own wrong; still according to the case of *Rex* v. *East Bridgeford* (*a*), if the pauper lived 40 days under that assignment, we should hold him settled in the parish: and one case is enough on such a subject. — Order of Sessions quashed.

A parish apprentice was, before the passing of stat. 18 G. 3. c. 47., bound till 24, and served till nearly attaining 21, when his master, being about to leave the parish, and no longer wanting his service, told him that he

581. *Rex* v. *Bow, otherwise Nymett Tracey*, *M. T.* 56 *G.* 3. 4 *M.* & *S.* 383. — Removal from *B.* to *O.* — Order quashed, subject, &c. — The pauper, on the 24th of *January* 1767, was bound as a parish-apprentice, by indenture, to one *S.*, of *N.*, to serve until he attained the age of 24. He served accordingly until within a short time of his attaining the age of 21, when his master being about to leave *N.*, and no longer wanting the pauper's service, told him that he might leave him, and go where he liked, and shift for himself, but that if he could not provide for himself he might return to him. Upon this the pauper quitted *S.*, but his indentures were not given up to him, nor cancelled, nor was any thing said about them. Upon quitting *S.* he hired himself to another person in *N.*, and served until nearly four months after

(*a*) *Ante*, pl. 557.

ing of age, when, without any communication with *S.*, he himself as an apprentice, by indenture, to one *W.*, of *O.*, ree years, to learn the business of a tanner, to which in- e his father was a party as a security for his service. Under identure he served *W.* at *O.* for the three years. And the on was, Whether the pauper acquired a settlement by this e with *W.* at *O.*? — LORD ELLENBOROUGH C. J. If the pau- as not in a condition to convey to *W.* a present right to his e at the time when he bound himself by indenture to him, I a loss to discover how it could enure as a valid binding after- . Now, at the time when the second indenture was made, the aster had not parted absolutely with the apprentice, though e that he had done that which might be an answer to any by him on the indenture, or for harbouring his apprentice. his being but a parol agreement on his part, that the ap- ice might go whither he would, the master might by parol e what he had granted by parol, the relation which had been ed by deed not being capable of being dissolved by parol. riginal indenture, therefore, still subsisted both as to master pprentice; as to the master, because he might revoke his e, and resume his authority; and as to the apprentice, be- , if he was unable to provide for himself, he was at liberty to . — LE BLANC J. The difficulty of maintaining that here good binding to *W.* at *O.* is, that at the time of binding there not appear to have been any dissolution of the first contract. he contrary, both parties contemplated that it still subsisted, he licence given to the apprentice was to go and see if he shift for himself; and if he could not he was to return under identure. There was a very sufficient reason, therefore, for the iving up the indenture, in order that the parties might have enefit of it. — BAYLEY J. Unless the first indenture was at d when the pauper entered into the second, he was not at ime *sui juris* to contract: which I take to be the question, hat to say the second indenture was only voidable is no r to it. — Order of Sessions confirmed.

might leave him and go where he liked, and shift for himself; but if he could not provide for himself, he might return to him; upon which he quitted, and when he was about four months past 21, bound himself by indenture as apprentice to another master for three years, and served with him the three years: Held, that he did not acquire a settlement by service under the second indenture.

2. *Rex* v. *Ashby-de-la-Zouch* (*a*), *M. T.* 58 *G.* 3. 1 *B.* & *A.*, — Removal from *B.* to *A.*—Order confirmed, subject, &c. — denture (*June* 16th, 1804), the pauper being 10 years of age, ound apprentice by the parish of *S.*, until she was 21, to rs. *A.* & *B.* of *A.*, cotton manufacturers, and continued to with them in that parish until *November* 1813, when they re- ished the manufactory and gave up business; having at that a considerable number of female parish apprentices, who a particular dress in their manufactory. Previously to their ishing the business, *B.* went over to *C.*, a partner in another n manufactory at *B.*, and proposed assigning to him the ntices, but did not mention either their names or their er. *C.* having agreed to take them, an application was ac- gly made by *B.* to two magistrates, in order to get the as- ent completed, but they objected, that it could not be done ut the consent of the several parish officers. *B.* then told *C.* he was willing to execute as far as he had promised, but ng further could be done than the verbal agreement before , which was, that he *C.* should have all their apprentices.

The master of several apprentices, upon his quitting business, proposed to assign all his apprentices, without mentioning their names or number, to C., but no assignment was ever made; the pauper, one of the apprentices, was afterwards hired by C., as a servant, for 51 weeks; and her former master, on meeting her,

(*a*) See Rex v. Whitchurch, *post*, pl. 584.

expressed his approbation of her having gone into the service of C.; the Sessions having found that there was not a particular assent of the original master to the second service, and, therefore, the relation of master and apprentice never subsisted between C. and the pauper, this Court thought the Sessions well warranted in that conclusion.

The pauper was at that time with *A. & B.* About 18 of these apprentices were sent to *C.* at different times; with each party one of *A. & B.*'s servants was sent to deliver them to the overlooker of *C.*'s manufactory; with some, their indentures were sent over; with some, they were not. Many did not go to *C.*'s, but went where they pleased, and procured places for themselves. After it was found that the parish apprentices could not be formally transferred, the mother of the pauper applied to *B.* to have her discharged, as she wished to get her a place elsewhere, and she went home to her mother, with *B.*'s knowledge and consent, and with his permission, to get a place where she pleased. When she had been at her mother's about five weeks, *B.* called at her mother's house, and finding that she had not got into service, he recommended to the mother that she should take her to *Burton*, to *C.*'s, where she could get employment. After she had been at home about two months, the pauper went over to *C.*'s with another girl; no other person accompanied them, and they were in their ordinary dress, not that of *A. & B.*'s manufactory, and their indentures were not taken with them. They were both hired as servants for 51 weeks by the foreman of *C.*'s works, who did not know that they were apprentices, and who told them at the time that they might come into the service; but if they did, they should be hired for only 51 weeks. Shortly afterwards, *B.* met the mother, and asked if the pauper was gone to *C.*'s, and was pleased at hearing she was; and afterwards meeting the pauper, he asked her where she was; and on being told that she was at *C.*'s, he said, it was the best thing she could do. In *October* last, *B.* being applied to by one of his apprentice girls, who was at *C.*'s, for her indentures, gave them to her, and at the same time sent to the pauper at *C.*'s, her indentures, which were then expired, saying, "Take them to her, for they are of no use to me." He also sent over at the same time the indentures of another girl who had been his apprentice. The pauper continued in the service of *C.* until she was removed, in consequence of her being then with child. The Court were of opinion, that the pauper gained no settlement by the service with *C.*, considering that the facts proved did not amount to a particular assent on the part of the original masters to the second service, and consequently that the relation of master and apprentice between *C.* and the pauper never existed.—LORD ELLENBOROUGH C. J. It has been expressly found by the Sessions, that this pauper was not an apprentice, and it appears to us most clearly that the prior service was not continued; for when the apprentice applied to come into the service, she was told, that she should be hired only for 51 weeks, which shows that this was not a continuance of the old service. I think the facts of the case warrant the Sessions in the conclusion at which they have arrived. —BAYLEY J. I am of the same opinion. It was for the Sessions to draw the conclusion. They have concluded that the relation of master and apprentice did not exist, and I think they have drawn a right conclusion. The master to whom the pauper went to be hired, was never apprised of the relation of master and apprentice having subsisted; he hired her as a servant, which constituted a new and a different relation; it seems to me, therefore, that the Sessions were well warranted in drawing the conclusion, that the relation between these parties was not that of master and ap-

prentice; and if it were not, then the service of the pauper could not confer a settlement. — ABBOTT J. I am of the same opinion. The Sessions have drawn the only conclusion which persons of a sound understanding could have drawn from the facts stated. — HOLROYD J. concurred.—Order of Sessions confirmed.

583. *Rex* v. *Barleston*, *E. T.* 3 *G.* 4. 5 *B.* & *A.* 780.—Two justices removed *Blockley* and his family from *H.*, to *Barleston*. The Sessions on appeal confirmed the order, subject, &c. In support of the order, a settlement by apprenticeship under a parish indenture to *G.* in the appellant parish, was proved. The appellants, in order to show a subsequent settlement in the parish of *St. Mary*, in *Leicester*, gave in evidence a paper purporting to be an assignment of the pauper, in *February* 1812, by the said *G.* to *D.* of that parish, and proved a residence of more than 40 days in the same parish under that assignment. There was a premium of 5*l.* paid by *G.* to the new master, but it was the sum which he, *G.* had received with the pauper, on the original binding from *H.* The instrument by which the assignment was made, was in writing, and was executed by *G.*, *D.*, and the pauper. The instrument, after reciting that the apprentice had about eight years of his term unexpired, as appeared by his indenture; stated, that for divers good considerations, *G.* did fully and absolutely give, grant, assign, and set over unto *D.* of the borough of *Leicester*, framework-knitter, all such right, title, duty, term of years to come, service and demand whatsoever, which the said *G.* had, in or to the said *B.*, or which he might or ought to have in him by virtue of the said indenture. And the said *G.* covenanted with the said *D.* that he, the said *B.*, should, notwithstanding any thing to be done by *G.* during the said term of years, well and truly serve the said *D.* as his master, &c. Provided, that the said *D.* shall well entreat and use him, and learn him the craft, mystery, and occupation of a framework-knitter; and should also allow him sufficient meat, &c. which the said *D.* agreed to do in consideration of the services of the said apprentice; and also, the sum of 5*l.* agreed to be paid by *G.* to *D.*, being the said sum of money, which he, the said *G.* received with the said apprentice, from the churchwardens and overseers of *H.*, on their putting and placing him, the said *B.*, apprentice to the said *G.* It was objected by the respondents, that this assignment was not made under the 32 *G.* 3. *c.* 57. with the consent of two magistrates in writing; and, therefore, was not an instrument under which a settlement could be gained. The appellants contended, that it was a valid instrument to confer a settlement, and cited the 56 *G.* 3. *c.* 139. § 9., which passed subsequently to the assignment. The case was argued on a former day. — ABBOTT C. J. We are of opinion that the pauper gained a settlement in the borough of *Leicester*, and, consequently, that the rule must be made absolute for quashing the order of removal, and the order of Sessions confirming the same. The assignment of the apprentice and the service to his new master, were prior to the prohibitory statute 56 *G.* 3. *c.* 139, and, therefore, are not affected by it. The prior statute 32 *G.* 3. *c.* 57. § 7. is not a prohibitory but an enabling statute. Before that statute, a master could not discharge himself from the obligation to maintain a parish apprentice, by assigning him to another person, nor were the apprentice and the new master subject to the

Where a parish apprentice was assigned by his original master to J. S., by an instrument, in writing, but there was no consent of two magistrates: Held, that this was not a lawful assignment under 32 G. 3. c. 57. § 7., but it was sufficient to show the consent of the first master, to the service to J. S., and, consequently, such service was good as a service under the original indenture, and conferred a settlement.

ordinary jurisdiction of the justices, with respect to masters and parish-apprentices. This appears by the preamble to the section, and then the act proceeds with certain enactments, whereby if the terms are complied with, these inconveniences are remedied. If the terms are not complied with (and in the present instance they were not) the case is not within that statute; but it is to be considered, with regard to the law, as it stood before that act was passed. And so considered, although the assignment may be for many purposes inoperative, yet it manifests a consent of the first master to a service with the second, and renders that service a service under the original binding. This is established by the cases of *Rex* v. *The Inhabitants of East Bridgeford* (*a*), and *Rex* v. *The Inhabitants of St. Petrox.* (*b*.) In the first of those cases, the widow of the first master, who was of *Orston*, without taking out administration to her husband, assigned the apprentice to one *G.*, at *S.*, and *G.*, afterwards, by parol, assigned him to one *B.*, at *E. B.*; and it was held, that he gained a settlement by the service at *E. B.*, *by reason of the consent.* In the last of those cases the service, under the original binding, was in *St. P.*: and the first mistress indorsed the indenture, and delivered it up, together with her interest in the apprentice, to one *F.*, of *S. F.*, and the apprentice, by a new indenture, to which the mistress was not a party, voluntarily bound herself to *F.*, and served him at *S. F.*; and the Court held, that though an assignment of an apprentice (except by custom in *London*) cannot strictly be made; yet, as this assignment was with the assent of the mistress, the service under it would be good, for the purpose of conferring a settlement; *for the servitude continued under the first binding.* And these cases, and some others determined upon the same principle, appear to have been recognised by the Court, in the case of *The King* v. *The Inhabitants of Christowe* (*c*), in which case the first master had not assigned the apprentice, but had taken upon himself to bind her out anew, with her consent, to another person, by a new indenture of apprenticeship; and the Court, on that account, thought that the service to the second master could not be considered as a service under the original indenture. — Order of Sessions quashed.

(*a*) *Ante*, pl. 557.
(*b*) *Ante*, pl. 504.
(*c*) *Ante*, pl. 579.

Before the expiration of the term of an apprenticeship, the apprentice asked his mistress leave to go into another service, without mentioning where he was going. The mistress said that she was not against it, if he could better himself. The apprentice then went and hired himself to A B in another parish for a

584. *Rex* v. *Whitchurch*, *E. T.* 4 *G.* 4. 1 *B.* & *C.* 575. — Upon appeal, against an order whereby *Pierce*, his wife and children, were removed from *D.* to *W.*, the Sessions confirmed the order, subject, &c. The pauper, *P.*, by an indenture of the 7th *April* 1798, was bound a parish apprentice, till 21 years of age, by the appellant parish, to one *D.*, residing in the same parish, under which he there served her for six years, when the indenture having still three years to run, and the pauper not agreeing with *D.*'s foreman, asked his mistress leave to go into another service, to which she consented, saying "she was not against it, if he could better himself." He did not mention where he was going. The pauper went to one *J.*'s, in the parish of *R.*, and hired himself to him for a year, at 3*l.* 16*s.* wages. He returned and told his mistress, who said, "Very well: she was not against it." In a few days he went to his new place, and in about a fortnight returned to his old mistress for his clothes, who said, "she hoped "he liked his new place," and he said "he did." Under these circumstances he lived with *J.*, in the parish of *R.*, three months.

— PER CURIAM: The question in this case is, whether the service with *J.* was a service under the indenture. It is clear that the justices have thought that it was not; because they have confirmed the order of removal. They have not said so in express terms, for then there could be no argument upon the subject before us; but they have left it to us to say, whether the conclusion they have come to was right or wrong. We are clearly of opinion, that their decision was right. Much subtlety has been introduced into this branch of the law, of which some of the cases cited furnish examples. Of late the Courts have inclined to decide these questions upon plain principles. In this case, it is impossible to say that the pauper served *J.* as an apprentice under the indenture. It does not appear that *J.* even knew that the pauper was an apprentice. It appears that *D.* had consented to the pauper's going into another service generally; but then he had not mentioned to her where he was going. Afterwards, when he had hired himself to *J.*, he returned and told his mistress: but *J.*'s name was not even then mentioned; she did not dissent from it; but there was no express consent to that particular service. It has been urged, that the subsequent assent of the first master is sufficient to make the second service a service under the indenture; but the contrary is established by *Rex* v. *St. Helen's, Stone Gate.*(*a*) Besides, under these circumstances, the service to *J.* was under a contract of yearly hiring; the pauper served under that contract as a servant, and not under the indenture as an apprentice; and very different duties result, on both sides, from these different descriptions of service. The case of *Rex* v. *The Inhabitants of Ashby-de-la-Zouch* (*b*) is strongly in point with the present, the want of knowledge in the second master, and the hiring of the pauper as a servant, are common to both cases; and those facts distinguish this from most of the cases cited in argument. For these reasons we are of opinion that the service with the second master was not a service under the indenture, and, consequently, that the order of Sessions is right. — Order of Sessions affirmed.

year, at certain wages. He then returned to his mistress, and told her what he had done, and she said that she was not against it. The apprentice then went to his new place, and lived with A. B. for three months: Held, that the service with A. B. was not a service under the indenture; first, because there was not a particular assent of the mistress to that service; and, secondly, because the service with A B was not as an apprentice, but as a servant under a contract of hiring.

(*a*) *Ante*, pl. 578.

(*b*) *Ante*, pl. 582.

VI. *Of Apprenticeships under Certificates.*

585. *Rex* v. *Petham*, *M. T.* 1 *G.* 2. *Burr. S. C.* 154. — *W. S.*, the father of *T. S.*, being legally settled in *P.*, removed with his family into the parish of *L.*, and dwelt there under a certificate from the parish of *P.*; but never gained any settlement there or elsewhere, after his removal from *P.* During the time that he and his family dwelt in *L.* under the certificate, *T. S.* was born in *L.* *T. S.*, not having gained any settlement in his own right, by indenture duly stamped and executed, bearing date the 10th of *June* 1721, bound himself an apprentice for the term of seven years from the day of the date of the indenture, unto *M.*, blacksmith, then residing in the parish of *T.* At the time of binding, and also during the whole time, *T. S.* lived with *M.* as his apprentice under the indenture, *M.* being a certificate person from the parish of *S.* to the parish of *T.* He dwelt with and served *M.* in T. as his apprentice under the indenture, from the day of its date to the 30th of *August* 1723, when *M.* being then a certificate person as aforesaid, by his

An apprentice assigned by a certificate-man to a master living in *another* parish, gains a settlement.

him and he might go where he pleased," and the apprentice hearing of another master was going to him, and being met by his original master, and asked where he was going, answered that he was going to *U.*, to which the master replied, "*he might go there or where he pleased:*" Held, this was not such a particular assent of the original master to the service with *U.* as would enable the apprentice thereby to gain a settlement, though the indentures were not delivered up or cancelled.

(*a*) *Ante*, pl. 556.

(*b*) *Ante*, pl. 561.

the pauper that one *U.*, who wanted a boy, was at an inn in the neighbourhood of his master's house, and that he should go to the inn. As the pauper was going out of the house, his master met him and asked him, where he was going? The pauper told him he was going down to *U.* *M.* said, "he might go there or "where he pleased." Thereupon the pauper left *M.*'s house, and went and hired himself, and lived with *U.* above 40 days in the parish of *S.*, but no communication appeared to have taken place between the original master and *U.* — LORD KENYON C. J. The service with *U.* was not a prosecution of the service of the original master. Some of the cases upon this subject have been carried to a greater degree of refinement than might be desirable if they were to be decided again *de novo*; but we are to be governed by the general principle resulting from them, and not by particular expressions which vary in every case. It would, perhaps, have been better to have confined the power of gaining a settlement to a service with the original master. The case of *Rex* v. *St. George's, Hanover Square* (*a*), first broke in upon that line, and determined that an apprentice serving another by the consent of the original master might thereby gain a settlement: from thence has ensued such a train of decisions as it is difficult to follow; however the general principle of them all is to be found in *Rex* v. *Austrey* (*b*), where *Lord Mansfield* said, that, in order to gain a settlement by the apprentice serving another master, there must be "an express and explicit leave and consent given "by the master to the particular service," so as to be considered as "a service of his master under the indenture;" and not, as he observed in that case, "a leave intended to be quite general;" or as here, a general quitting of the service and leave to go where the pauper pleased. Here the master first tells the pauper he had no longer any employment for him, and he might go where he pleased, and then somebody having sent for the pauper, he tells his master, on being asked where he is going, that he is going to *U.*, on which the master repeats in effect what he had before said, that he might go there or where he pleased; meaning that he no longer looked for his service, or took any concern how he disposed of himself. — GROSE J. There must be a particular consent of the original master to the service with another in order to give a settlement. In the case of *Rex* v. *The Holy Trinity in the Minories* there was a particular recommendation to a particular service, which the Court held sufficient for that purpose. Whether there be such a particular assent of the original master to the subsequent service is more a question of fact than of law (*c*), and here the Sessions have in effect negatived that fact by finding that the pauper gained no settlement by the service with the second master. — The other judges agreed that the conversation stated did not import an assent by the master to the particular service; but was, in effect, no more than repeating what he had at first said, that he had no further occasion for the pauper, and he might go where he pleased. — Order of Sessions confirmed.

(*c*) *Vide* Rex *v.* Shebbear, *infra*.

An apprentice offered his master a guinea "to let him off," to which

577. *Rex* v. *Shebbear*, *M. T.* 41 *G.* 3. 1 *East*, 73. — The pauper was bound at seven years of age by a parish indenture to *T.* of *B.* till the age of 24. *T.* assigned the apprentice seven years afterwards to *S.* of the same parish, with whom he lived there till *Lady-day* 1780, when two months were wanting of the expiration of the

pprenticeship. He then proposed to *S.* to let him off the remainder of his time, which he at first refused to do: the pauper hen offered to give *S.* 1*l.* 1*s.* if he would let him off, which *S.* greed to do, and also to give him a new suit of clothes when the *l.* 1*s.* was paid. The 1*l.* 1*s.* was not paid to *S.*; nor did *S.* ive the pauper the clothes: nor were the indentures given up or ancelled. On the morning of *Lady-day* above mentioned the auper went away and offered to serve one *Brent*, who refused to mploy him, conceiving him to be an apprentice. The same day e went to one *Battishill* a blacksmith in *S.*, who said he would ot take him without *S.*'s consent. The pauper then went to *S.* nd told him what *Battishill* had said: *S.* then replied, "You may ' go with all my heart, I think it will be a good thing for you to ' learn the trade." On his telling *Battishill* what *S.* had said, *Battis-ill* agreed with him; and he lived with him in *Shebbear* for the last 0 days and upwards before he attained the age of 24. — LORD ENYON C. J. This case is very distinguishable from that of *Rex* . *Crediton* (*a*), which we decided a few days ago: and upon the ame ground on which we there held that no settlement had been ained as an apprentice by the subsequent service, I think it is as lear that the Sessions have drawn the right conclusion in this case n adjudging that a settlement was gained by the service with the econd master. There is no doubt but that the indentures still ubsisted in point of law, not having been delivered up or can-elled, or any consideration paid for doing so. In the former case ve were satisfied that the master did not really mean to give a articular assent to the second service: he had there told the ap-rentice to go where he pleased, having no further occasion for im; and when the apprentice told him where he was going, he nswered that he might go there or any where else. But here the aster was applied to for his consent to the particular person amed; and he expressed his approbation of the apprentice going here, telling him that it would be advantageous to him to learn he trade. This, then, was not an indiscriminate leave to serve ny person, but a particular consent to a particular service; and his is the plain line of distinction between all the cases; which it s to be hoped will make an end of all such questions in future. Perhaps it would have been more correct for the Sessions to have ound the fact of such particular consent, instead of only finding he evidence of it, as they have done. And if any thing were ikely to turn upon it in this case it should be sent down to them gain to find that fact. But I do not know what advantage could accrue from thence to the respondents, for, in effect, the Sessions ave drawn that conclusion, and upon these premises I do not see ow they could have drawn any other. — GROSE J. I am decidedly against sending this case down again to the Sessions, he only consequence of which would be to enhance expence: for I think that they clearly meant to find the fact of the original aster's consent to the second service, and by their adjudication hey have, in effect, found that fact. I have reconsidered what I aid the other day in *Rex* v. *Crediton*, and am satisfied that it s right; namely, that whether there be a consent to a particular ervice or not is properly a question of fact for the Sessions to determine. In the former case they virtually negatived the consent, as here they have found it; and I think the evidence

the master agreed, and was also to give him a suit of clothes when the guinea was paid, but the indentures were not delivered up or cancelled. The guinea not being paid, the indentures still subsisted in law, and a settlement may be gained by serving another master with the consent of the first. The sessions ought properly to find the fact of such consent, and not merely evidence of it: but having found that on application by the apprentice to his original master for leave to serve one *B.* (who would not take him without) the master said, "he might go with all his heart, and that it would be a good thing for him to learn the trade;" this was holden sufficient evidence to warrant the conclusion of the Sessions that the original master had consented to the particular service.

(*a*) *Ante*, pl. 576.

If an apprentice be bound to *a freeman*, and *before a service of* 40 *days* is performed, the master receive *a certificate*, the subsequent service under the indentures will not gain a settlement.

588. *St. Cuthbert's* v. *Westbury*, *H. T.* 32 *G.* 2. *Burr. S. C.* 470. — *S.*, being settled in *St. C.*, was bound an apprentice on the 4th of *December* 1753, by indenture of that date, to *C.*, who then and for several years before resided in *W.*, but whose legal settlement was at *H.*, a neighbouring parish; and he entered into the service of *C.* on the said 4th of *December*. *C.*, having been some years before applied to by the parish-officers of *W.* to obtain a certificate from *H.* (which he then promised to do), did afterwards, on the 26th day of the same month of *December*, obtain a certificate from *H.*, acknowledging him to be their inhabitant legally settled: which certificate was, the same day, delivered to the overseers of *W.* The pauper continued with and served *C.*, under the indenture, from the said 4th day of *December*, for and during the space of three years; and resided all that time with *C.* in *W.* — LORD MANSFIELD delivered the opinion of the Court; which he said was agreeable to their sentiments intimated upon the argument: for their opinion, he said, upon this binding, so circumstanced as is stated, and a service of only 22 days under it, by the apprentice in *W.*, was, "That he has gained no settlement there." For it is in the nature of a condition precedent to the gaining any settlement at all, "That the apprentice must have been bound to, and served for 40 days, a person who did not come into or reside in the parish by means or licence of a certificate:" and as in the present case, this precedent condition has never been performed, he cannot have gained a settlement. And it is distinguishable from the case to which it has been compared, of a servant hired when unmarried, and marrying before his year is expired (which has been holden not to prevent his settlement); because there the event was subsequent to the contract, which was complete and strictly regular when entered into, and required no precedent condition of that kind; it being only necessary to be unmarried when hired: so that in that case, it is in the nature of a condition subsequent. But this is a condition precedent; and the apprentice is under an absolute disability of gaining a settlement, unless he be bound, and serve 40 days to a man who did not come into or reside in the parish, by means or licence of a certificate; which this pauper has not done: and, consequently, he has gained no settlement by this service.

An apprentice to a certificate-man in *A.* removed voluntarily with his master to *B.* where he continued 40 days: he afterwards married a woman living in *C.*; but continued to serve his master by day in *B.* and to lodge with his wife in *C.* until the apprenticeship

589. *Rex.* v. *Spotland*, *H. T.* 5 *G.* 3. *Burr. S. C.* 527. — The pauper, when a boy of about 14 years of age, was legally bound an apprentice by his father to one *O.*, of *C.*, a certificated person from *M.* to *C.*; and served his master in *C.* for some years: then he removed with his master into *S.*; where he served him 40 days and upwards; and then was married to a young woman whose parents lived in *C.*: and till the expiration of the apprenticeship, which was upwards of half a year, he daily worked with his master in *S.*; but went and lodged with his wife, at her parent's house at *C.* — LORD MANSFIELD: It is admitted, that the apprentice gained a settlement in *S.* My present thoughts upon this case are these: The master, the certificate-man from *M.* to *C.*, gained no new settlement in *S.*: and the pauper still remained an apprentice to this certificate-man. The master may still go back to *C.*, the parish to which he was certificated. Therefore, I think at present, that the apprentice could not gain a set-

tlement in *C.*—And THE COURT was of opinion that he had gained a settlement in *S.*

expired. The apprentice gains a settlement by this removal and residence in *B.*, notwithstanding the certificate. Cald. 98.

590. *Romsey* v. *St. Michael's*, *E. T.* 9 *G.* 3. *Burr. S. C.* 640.—*B.* was bound apprentice by indenture, for four years, to *K.*, of the parish of *A. S.*; with whom he there served and resided for three years; and then it was agreed between the said *K.*, *B.*, and one *D.*, that *B.* should work with *D.* the remainder part of the apprenticeship; for which *K.* was to receive 2*s.* a week. He served and resided with him accordingly in the parish of *R.*; and *D.*, during the whole time, resided within that parish, under a certificate from the parish of *St. G.* The question was, Whether the residence in *R.* was under the certificate?—LORD MANSFIELD: This question is plainer than any argument can make it. The end and intention of this act of parliament was to prevent certificate-persons from bringing a charge upon the parishes into which they came by certificate. How can it be imagined, then, that another man's apprentice should gain a settlement by serving him in that parish, when his own apprentice is made incapable of doing so?—Mr. JUSTICE YATES: The intention of this act of parliament is, that the certificate-man shall not be the instrument of the apprentice's gaining a settlement in the parish to which he himself came by certificate; though he may, indeed, be an instrument of his gaining one in a third parish: as in the case of *Rex* v. *Petham*.(*a*) So, in the case of *Rex* v. *East Bridgeford* (*b*), *East Bridgeford* was a third parish, and not the parish to which *Edward George*, the assignor of the apprentice to *Baggaley*, was certificated. There is nothing in the case of *East Bridgeford* which contradicts the position, that no certificate-man shall be the instrument of an apprentice's gaining a settlement in the same parish into which he himself came under certificate.—Mr. JUSTICE ASTON: The principle is, that the certificate-man shall not be an instrument of burthening the same parish with the apprentice; but there is no estoppel or conclusion between the parish that gave the certificate and a third parish.—Mr. JUSTICE WILLES concurred.

An apprentice who has served three years out of four to a *freeman*, cannot gain a settlement by serving the remainder of his time, and with his original master's consent, to a *certificate-man* in a different parish.

(*a*) *Ante*, pl. 585.
(*b*) *Ante*, pl. 557.

591. *Rex* v. *Weddington*, *E. T.* 14 *G.* 3. *Burr. S. C.* 766.—The pauper was born in the parish of *C.*, where his father then resided under a legal certificate from the parish of *W.*, and where he (the father) still resided under the certificate. In *June* 1748, the pauper, being then of the age of eight years and a half, bound himself apprentice by indenture, with his father's consent (who was a party to the indenture,) to *M.*, of *C.*, for seven years; and served him therein under the indenture one year and a half: and then the indenture was destroyed, by consent of the master, the father, and the apprentice. The pauper, within half a year afterwards, bound himself apprentice by indenture, with his father's consent, to *M.*, of the parish of *B.*, for seven years; and served him in the said parish, under the said last-mentioned indenture, four years; and then this indenture was destroyed by consent of the master, the father, and the apprentice. The pauper, after this, returned into *C.*, and bound himself apprentice, by indenture, to one *S.*, for two years, and duly served *S.* in the said parish, under the said last-mentioned indenture, the whole of the said two years. The pauper, in about three years next after the expiration of his said apprenticeship to the said *S.*, hired himself for a year to L. S., of

The son of a certificated person who is bound apprentice in the certificated parish, may, on his indentures being cancelled, bind himself apprentice in a different parish, and if he gain a settlement under the second indentures, he may afterwards gain a settlement by hiring and service in the parish to which his father was certificated. Rex v. Sutton, ante, pl. 461.

the said parish of *C.*; and duly served him, in the same parish, for a year, under the said hiring. — And THE COURT was of opinion that the indentures had been legally dissolved, and that the pauper had gained a settlement in *C.*: and the orders removing them from that place to *W.* were quashed.

If an apprentice be bound to a certificate-man in A., and the certifying parish give the master a new certificate to B., the apprentice gains a settlement by serving his master the last 40 days of his time in the parish of A.

592. *Rex* v. *St. Peter's, in Derby*, *E. T.* 26 *G.* 3. 1 *T. R.* 218. — The pauper, on the 5th of *November* 1751, was bound apprentice for seven years to *Pinn* in the parish of *All Saints*, to which place *P.* had a certificate from the parish of *Smalley*. The pauper served his master in *A. S.* about five years and a half. And the master with his family, at *Lady-day* 1757, removed to *C.*, where he resided till the 14th of *January* 1758, when *S.* granted *P.* a certificate. Between *Lady-day* 1757 and the 14th of *January* 1758, the pauper served his master upwards of 40 days in *C.* *P.*, the master, never returned to *A. S.*, but continued at *C.* under the certificate. The pauper returned to *A. S.* in the summer of 1758, and served his master there upwards of 40 days after *S.* had granted the certificate to *C.* The Sessions were of opinion, that the pauper gained a settlement by such last service in *A. S.* The only question was, Whether the second certificate to the parish of *C.* discharged the former one to the parish of *A. S.*, they having both been given by the parish of *S.*? — THE COURT was of opinion that this question was determined by the case of *Rex* v. *The Inhabitants of Birdham.* (*a*)

(*a*) *Post*, pl. 757.

If an apprentice to *a certificate-person* be assigned to a second master in the same parish, he cannot gain a settlement in that parish by serving the second master.

St. Cuthbert's *v.* Westbury, *ante*, pl. 588. Romsey *v.* St. Michael, *ante*, pl. 590.

593. *Rex* v. *Hinckley* (*b*), *T. T.* 31 *G.* 3. 4 *T. R.* 371. — *Furborough* was born at *F.*, (where his father was legally settled,) and at nine years old was bound a parish-apprentice to *P.* of *H.*, who was residing at *H.* under a certificate from *C.* The pauper, after serving part of his time with *P.*, was assigned by him to *H.*, a legal parishioner of *H.*, under an agreement, by which *H.* was to pay 1*s.* a week to *P.*, and which sum was paid accordingly. He served *H.* in *H.* above 40 days before he left him. — LORD KENYON C. J. delivered the unanimous opinion of the Court. The question in this case is, Whether any settlement was obtained by the apprentice by his service under his second master, who was a parishioner of *H.*, in that parish, his first master by whom he was assigned having been certificated thereto? The first impression made upon my mind was, that as the last 40 days of the apprenticeship were served under a person who was not under the disability of the certificate, such service gained a settlement; but upon looking more fully into the authorities cited, on which I had formed my first opinion, and adverting more particularly to the words of the statute of *Anne*, I am disposed to think that a settlement was not acquired by the service under the indenture with the second master in *H.*, although he were not residing there under the certificate. And that opinion which we have formed proceeds principally on the words of the statute of *Anne*, and the view with which it was passed. By the general tenor of the certificate-act, persons settled in one parish, bringing a certificate with them into another, have a right to remain there until they become chargeable; and the parish to which such certificate is granted cannot refuse to receive them. But the mischief was, that though the certificated persons themselves could not gain a settlement in that parish, yet they were the means of conferring

(*b*) See Rex *v.* Catesby, *post*, pl. 727.

settlements on others, by taking servants and apprentices, which was thought to be a great hardship on those parishes, who were bound to receive them under the certificate. Therefore, to provide against that inconvenience, the 12 *Ann. stat.* 1. *c.* 18. was passed; which, after reciting the 8 & 9 *W.* 3. *c.* 30. and that "many persons obtaining and bringing such certificates do frequently take apprentices bound by indenture, and hire and keep "servants by the year, who by reason of such apprentices and "services do gain settlements in, and become a great burthen to, "such parishes, &c., though such masters coming with such certificates have by virtue thereof no settlements in such parishes," &c.; for remedy it enacts, "that if any person whatsoever, who "shall be an apprentice bound by indenture to, or shall be a hired "servant to or with, any person whatsoever, who did come into "or shall reside in any parish, &c. by means or licence of such "certificate, and not afterwards having gained a legal settlement "in such parish, &c. such apprentice *by virtue of such apprenticeship, indenture, or binding*, any such servant by being hired by, or "serving as a servant as aforesaid to, such person, shall not gain "or be adjudged to have any settlement in such parish, &c. *by reason of such apprenticeship or binding*, or by reason of such "hiring or serving therein; but every such apprentice and servant "shall have his and their settlements in such parish, &c. *as if he "or they had not been bound apprentice or apprentices*, or had not "been a hired servant or servants to such person as aforesaid." There has never been any precise determination on this point; and therefore we think it better to abide by the words of the act, from whence the intention of the legislature can best be collected. And the act having expressly provided, that persons bound apprentices to certificated men shall not "*by virtue of such apprenticeship, indenture or binding*," gain a settlement in *such parish*, it is necessary that the *binding* should be such as would be capable of conferring a settlement by service under the original master in that place, otherwise no settlement can be gained there by virtue *thereof*. For the legislature intended, that no act whatever of this sort done by a certificated man should help to bind the parish. As to the case of *Rex* v. *Petham* (*a*), where it was held that the apprentice of a master certificated to *Tenterden* might gain a settlement under an assignment to a second master residing at *L.*, which was a third parish; that does not govern the present; because it does not interfere with the policy of the statute of *Anne*; for the parish of *L.* had not received the original master by force of the certificate, and therefore had no right to avail themselves of the provisions of that statute, which was intended for the protection of the certificated parish. But here the words of the statute cover *H.* in the broadest manner, to prevent any burthen coming on that parish, on account of their obligation to receive the certificated person. The other case principally relied on, of *Romsey* parish (*b*), has no application to the present question; for though it was contended generally at the bar, that the statute of *Anne* was confined to apprentices bound by indentures to certificated masters, and claiming settlements by serving under such original masters, yet the Court by no means adopted that argument, but decided rather on the ground, that no settlement could be gained by the apprentice, through the medium of a certificated

(*a*) *Ante*, pl. 585.

(*b*) *Ante*, pl. 590.

person in that parish. Therefore, as there has been heretofore no determination on this point, as the statute of *Anne* was passed for the express protection of the certificated parish, and as the words of the act are very particular and positive in favour of that parish, we see no reason to restrain the meaning of them to a service with the original master.

The apprentice of a master living at A, who has a certificate from B, but not delivered to the parish-officers of A, may gain a settlement by such apprenticeship.

594. *Rex* v. *Wensley*, *H. T.* 33 *G.* 3. 5 *T. R.* 154. — The pauper, being legally settled at *W.*, was bound apprentice to *H.*, of *C.*, with whom he continued two years. Before the pauper was bound to *H.*, the overseer of *C.* told *H.* he must procure a certificate, or they would remove him; he accordingly before such binding of the pauper procured a legal certificate from the parish of *D.*, directed to the township of *C.*, acknowledging *H.* to be their parishioner; but nothing further passed between *H.* and the overseers of *C.*, respecting the certificate, after their first requisition to him to procure one; he therefore, not being again called upon, did not deliver the certificate to the overseers of *C.*, and it remained in his hands without mention or further notice during the whole time that the pauper served him as his apprentice at *C.*; but some time after the pauper left *H.*, the certificate was delivered by *H.* to the overseers of *C.* The Court of Quarter Sessions confirmed the order, by which the pauper and his family were removed from *C.* to *W.* — LORD KENYON C. J. We cannot depart from the express and positive words of the act of parliament, which are decisive of this question. In the construction of some statutes, the Courts have thought, from considering the context and the words of it, that some particular words are merely directory; but there is nothing in this statute to show that the words commented upon should be construed to be directory only. The statute says expressly that, "if any person, who shall come "into any parish, &c. shall at the same time procure, bring, and "deliver to the churchwardens, &c. of the parish where such "person shall come to inhabit, a certificate," &c.; the act, therefore, requires a delivery at the time when the pauper goes into the certificated parish; and it is essential to the interest of that parish that it should be delivered, as the withholding it from them for a time may be the means of introducing frauds. The case of *Rex* v. *Buckingham* (*a*) only decided that a certificate, though not delivered, was an acknowledgment, by the parish granting it, that the pauper was settled with them when it was given, but did not determine that it prevented the pauper gaining a settlement in the certificated parish after it was granted. — Both orders quashed.

(*a*) *Post*, pl. 716.

A certificate extends to a wife, though married after it was granted; and no apprentice to such wife, after the husband's death, can gain a settlement in the certificated parish.

2 East, 281.

595. *Rex* v. *Hampton*, *E. T.* 33 *G.* 3. 5 *T. R.* 266. — In the year 1755, *Duffell* and *Mary* his wife, came to reside in the parish of *H.*, under and by virtue of a certificate, dated the 10th of *August* 1755, granted by the churchwardens and overseers of the poor of the parish of *T.*, and duly allowed, &c. acknowledging *J. D.* and *M.* his wife, to be inhabitants legally settled in *T.* After the granting of the certificate *M. D.* died; and *J. D.* married a second wife, named *M.*, on the 14th of *April* 1771, with whom he continued to reside in *H.*, until the *September* following, and then died, leaving the second *M. D.* him surviving, who continued to reside in the parish of *H.*, and who, on the 8th of *August* 1791, took *R.* an apprentice, being a poor girl of the

parish of *St. M.*, who was regularly bound to her by indenture by the parish-officers of *St. M.*, till she should attain the age of 21, or day of marriage. The apprentice served under the indentures in *H.*, upwards of 40 days, when her mistress, the second *M. D.*, died.—LORD KENYON C.J. The question arises on the statute 12 *Ann. st.* 1. *c.* 18., and it is, whether the pauper could gain any settlement in *H.*, by serving there under the indentures of apprenticeship to the second wife of the certificated person from *T.*; and I am of opinion, that she gained no settlement there by such service. It has been decided that a parish-certificate extends to those who were not originally included in it as members of the family at the time when it was given. In the *Sherborne* case (*a*) it was determined that children, born after the granting of the certificate, fell within the protection, if it may be so called, or rather (in that case) the disability of the certificate; and that they could not gain a settlement in the certificated parish by hiring and service. Now, in point of reason, I cannot distinguish this case from that: for beyond all doubt the certificate extends to the second wife; she is part of the family of the certificated person. In the case of *Rex* v. *Darlington* (*b*) we said that the certificate only extended to those who constituted a part of the family of the person to whom it was given; and when the children of that person married and settled, and became the heads of other families, the families descending from them could not claim the protection of the certificate; because they were the members of a different family from that to which the certificate was given. But I think that the case of *Rex* v. *Sherborne* decides this; there a child, born after the giving of the certificate, was held to be included in it, and, consequently, could not acquire a settlement in that parish by hiring and service: so here, the second wife was ingrafted into and formed part of the family of the *pater-familias*; and no apprentice or servant could gain a settlement by serving her in that parish to which the certificate was given.—BULLER J. I confess this case strikes me in a different light from my Lord Chief Justice; I think that the reasons given in *Rex* v. *Darlington* decide this case and prove that the pauper gained a settlement in *H.* The certificate was originally granted to *A.* and his wife, who was named in it; she died, the husband then married another wife, who survived him; and under this second wife this pauper claims a settlement by apprenticeship. I agree with the proposition, according to *Rex* v. *Sherborne*, that when the husband married the second wife she became a part of his family, and as such was protected by the certificate; and so she continued as long as she remained a part of his family. But I consider the certificate operating in favour of the man and his family, as long as any of the members of it remained part of his family: but when the husband died, the wife was no longer a part of his family, but might have been removed back to his parish. And, consequently, any person serving with her there as an apprentice after that time might gain a settlement by such apprenticeship.—GROSE J. The question in this case is, Whether the apprentice of the wife of a certificated person, married to him after the certificate granted, and taking the apprentice after her husband's death, gains a settlement in the parish to which the certificate was given by a residence of 40 days in

(*a*) *Post*, pl. 733.

(*b*) *Post*, pl. 742.

that parish under the binding by indenture of apprenticeship? This question depends on the true construction of 8 & 9 *W.*3. *c.*30. § 1.; 9 & 10 *W.*3. *c.*11.; and 12 *Ann. st.*1. *c.*18. § 2. By the first of these, (8 & 9 *W.* 3.) if any person shall come into any parish or place there to reside, and at the same time bring and deliver to the officers of the parish or place, a certificate, thereby owning and acknowledging the person mentioned in that certificate, to be an inhabitant legally settled in that parish, township, or place, every such certificate shall oblige the said parish or place to receive and provide for the person mentioned in the certificate, together with his family, as inhabitants of that parish; and then, and not before, it shall be lawful for such person and his children, though born in that parish, not having otherwise acquired a legal settlement, to be removed, conveyed, and settled in the parish or place from whence such certificate was brought. It is observable that nothing is contained in this act, respecting the wife of the person named in the certificate (unless she is herself named), but as she may be considered to be included in the words "his family;" and yet, undoubtedly in law, the parish giving the certificate is bound to provide for the wife, whether she be named in it or not, or whether a part of his family when the certificate was given; and the parish to which the man comes cannot remove the wife from the husband, resident under the certificate. Upon this act a doubt arose by what act a person coming to reside within a parish by virtue of a certificate might procure a legal settlement; and in the very next year, the parliament passed an act, 9 & 10 *W.*3. *c.*11. to obviate the doubt, and in the preamble stated the doubt in the way I have stated, *i. e.* by what act a person coming to inhabit or reside within a parish by virtue of any such certificate may procure a legal settlement; and by that statute, which *Wright* J. in *Rex* v. *Sherborne* (*a*), calls declaratory and explanatory, it is enacted that no person or persons whosoever, who shall come into any parish by any such certificate, shall be adjudged by any act whatsoever to have procured a legal settlement in such parish, unless he or they shall really and *bonâ fide* take a lease of a tenement of the value of 10*l. per annum*, or shall execute an annual office in such parish, being legally placed in such office. In *E.* 15 *G.*2. that case *Rex* v. *Sherborne* came on; and it arose upon the construction of these statutes. The question was, Whether the son of a certificated person, born of a second wife, after the certificate granted, could gain a settlement in the parish into which the father came with the certificate by service, and in any other mode than the two pointed out by 9 & 10 *W.*3. *i. e.* renting a tenement of 10*l. per annum*, or executing an annual office? It was held that the 8 & 9 *W.*3. extended not only to the certificate-man, but to ALL his family, and ALL his children; and they held that this child, although not coming into the parish when the father came, yet being afterwards in the parish as part of his father's family, was within the above statutes. This is, in effect, a determination that not only the persons named in the certificate, but every person of the future family of the person to whom it is granted, are within the above statutes. The case before the Court is, Whether a person, who has served an apprenticeship to a second wife married to a certificate-man after he came into the parish, and when she was his widow, thereby gains a settlement?

(a) Post, pl. 783.

The case of an apprentice to a certificated person is provided for by 10 *Ann. st.* 1. *c.* 18. The preamble of which is thus; I read it because an argument arises upon it, which appears against my opinion in the present case: "Whereas many persons, obtaining "and bringing such certificates, do frequently take apprentices "bound by indenture, and hire and keep servants by the year, "who by reason of such apprenticeships and services do gain "settlements in, and become a great burthen to, such parishes, "&c., though such masters coming with such certificates have by "virtue thereof no settlements in such parishes, for remedy thereof "it is declared and enacted, that if any person whatsoever, who, "upon or after the 24th *June* 1713, shall be an apprentice bound "by indenture, or shall after the said 24th of *June*, be a hired "servant to or with any person whomsoever, who did come into or "shall reside in any parish, township, or place by means or licence "of such certificate, and not afterwards having gained a legal "settlement in such parish, such apprentice by virtue of such ap-"prenticeship, indenture, or binding, and such servant by being "hired by or serving as a servant as aforesaid to such person, shall "not gain, or be adjudged to have, any settlement in such parish, "township, or place, by reason of such apprenticeship or binding, "or by reason of such hiring or service therein, but every such "apprentice and servant shall have his and their settlements in such "parishes, townships, or places, as if he or they had not been "bound apprentice or apprentices, or had not been a hired "servant or servants to such person as aforesaid." The question then is, Whether the widow, to whom the pauper was an apprentice, came into or resided in this parish by means or licence of the certificate given to her husband? The case I have cited goes a great way to determine this; the child, born after the certificated person came into the parish, was considered within the statute of *William*, because he was part of his family, and resided as part of the family in the parish; so here the widow had been equally a part of the family of the certificated person, had as such communicated to her her husband's settlement, could be removed with her husband to that settlement, and no where else; and, therefore, her case seems to me upon principle not to be distinguishable from the case of her child; if it can, this is remarkable, that the mother can be removed, although the child cannot, and that the apprentice to the child can gain no settlement, although it is argued that the apprentice to the mother can. This case comes directly within the words of the enacting clause of the statute of *Anne*, which are, "The apprentice or hired servant to "any person, who did come, or shall reside, in any parish by "means or licence of such certificate." When this woman became the wife of the certificated man, and part of his family, she had a right as such to reside there, and was there, as the child in the case cited was, by means or licence of the certificate. It may be said that the words of the preamble state the case of persons obtaining and bringing such certificates; the answer is, that the words of the enacting clause very wisely extend the case to persons coming or residing in the parish by means or licence of the certificate, for an obvious reason, that it might extend to the apprentices and servants of the children of certificated persons, born after the father comes into the parish; that it may extend to

the case of an apprentice to a second wife not named in the certificate, who may happen to be living in a parish in *L.*, a *feme sole* trader, and other cases of the like sort. It may likewise be said, that at the time of the service, she is not to be said to be residing by means of the certificate, because her husband was dead: but she is to be considered as much resident there by means of the certificate, as the child in the case cited was; she was part of her husband's family, and is neither to be removed from the other part of it, nor to be distinguished from it. From these statutes the principle and policy of the law is this; to enable men who can get a livelihood in a parish to which they do not belong, and cannot get one in that which they do belong, to go to the former. The law obliges the former parish to receive a person belonging to the latter and his family, if he bring with him his certificate of the parish to which he belongs: and such person and all his family shall reside in the parish to which the certificate is given till they are chargeable: and then and not before can they be removed. In return, the law holds out to the parish receiving the person and his family with the certificate, an indemnity, that neither he nor any part of his family that then is, or thereafter shall be, shall bring any burthen upon the parish. The widow at the time of his death was a part of the family, and so continued till she married again, or deserted the right she had under the certificate. And this is an answer to a question put at the bar, whether if she had married again, her husband could have been considered as resident under the certificate? Certainly not. After her marriage she takes her husband's settlement; upon a second marriage that is gone; and she has her second husband's, and not the first husband's settlement. And when it is said that she resided under the husband's certificate only during his life, I say it is otherwise; she is resident as the child was resident; and this has been determined to be as part of his family, and as such under the certificate as well after as before his death. Considering this woman as part of her husband's family, she came into the parish, or was resident there, by means or licence of the certificate: the apprenticeship to her was, therefore, within the words of the 12 *Anne*. It was a burthen brought by such residence in the parish, to which the certificate was given, and against which, upon the principle of all the acts, the parish certifying the husband to belong to them ought to indemnify the parish receiving the husband, as a burthen brought upon it by his wife.

The son of a certificated person cannot gain a settlement in the certificate parish by apprenticeship, though the father, to whom the certificate was given, died six months before the expiration of the apprenticeship.

596. *Rex* v. *Alfreton*, *H. T.* 38 *G.* 3. 7 *T. R.* 471. — *C. H.* was born in the parish of *St. Mary*, when his father was so residing there under a certificate from *A.* Whilst his father was residing in *St. M.*'s, the pauper was bound apprentice to *C.* of the same parish, for seven years by indenture; and after serving him two years, he was assigned to *P.*, of the said parish. Six months before the expiration of the apprenticeship, the pauper's father and mother both died, and the pauper continued to serve his master, *P.*, the remainder of the term in the same parish. — LORD KENYON C. J. This is an attempt on the part of the parish of *A.* to put a construction on the certificate-act, different from that which it has invariably received ever since it was passed. The rule was laid down in the case of *Rex* v. *Darlington*, in terms so plain, that he who runs may read. And the *Sherborne* case, in

which it was holden that a certificate extends not only to the person himself to whom it is granted, but also to his family, was not over-ruled, although it was explained, by that of *Rex* v. *Darlington*. (*a*) All the cases have said, that children are part of the family of the certificated person, and within the protection of the certificate act: in *Rex* v. *Darlington* the question was, Whether or not the certificate extended to grandchildren? The Court said it did not, but was confined to the person himself, and to his children, and that a second generation was not within the meaning and protection of the act. And in the case of *Rex* v. *Heath* (*b*), I wished to adopt the doctrine established in the case of *Rex* v. *Darlington*. But this is an attempt to overturn all the cases upon the subject. — ASHHURST J. The decisions upon this point are clear and decisive; and it would be of dangerous consequences now to overset them. — GROSE J. In the case of *Rex* v. *Heath*, we determined that a son ceased to be part of his father's family when he married and became the head of a family himself: but this case is very distinguishable from that, for here the residence of the son in *St. M.*'s was protected by the certificate granted to the father; and to determine that the son could gain a settlement in that parish by apprenticeship, would be to say, that all the former cases on this subject were improperly decided. — LAWRENCE J. In contemplation of law, this son came into the parish of *St. M.* under the certificate: now the statute says, that a person who comes into a parish by a certificate can only gain a settlement there in one of two ways; but apprenticeship is not either of those two ways, and, therefore, the pauper did not gain a settlement there.

See Rex v. Selson, 1 Wils. 184., *contrd.*

(*a*) *Post*, pl. 742.

(*b*) *Post*, pl. 762.

See R. v. Sherborne, *post*, pl. 733.

597. *Rex* v. *Sowerby*, *E. T.* 42 *G.* 3. 2 *East*, 276. — *Richard S.* in 1745, went with a certificate, in which he only was named, from *D.* to *S.*; and during his residence there under that certificate, his son *Ralph S.* was born. *Richard S.* died; after whose death *Ralph*, his son, being arrived at manhood, followed the business of a twine-spinner at *S.* for many years; and about 1780, which was 10 years after the death of his father, he engaged the pauper, *R. M.*, as his servant in the above business; and the pauper continued in such service at *S.* for 11 years: during which period he was, whilst unmarried, hired to and served him for a year. *Ralph S.* also, during these years, hired a boy to turn the wheel necessary in twine-spinning. When the pauper was hired for and served a year as above mentioned, *Ralph S.* was a bachelor, and lived in a house at *S.* with his mother, which she went to and rented after her husband's death, at about 50*s.* a year; and he never left this house or his mother, except for a few weeks in harvest-time in one year. The mother had no concern in the twine-spinning business; and the pauper and the boy were the servants of *Ralph S.*, and not of his mother. — LORD ELLENBOROUGH C. J. The opinion which I have formed does not appear to me to clash with the case of *Rex* v. *Heath*. (*c*) There there was every thing which could well be predicated of emancipation: the marriage of the son; his living in a separate house from his father, as the head of a distinct family; and being rated by the parish as such in his own name. Here there is nothing of the kind; while the father was living the son resided under his roof, and after the father's death he continued to reside with his mother, who was the representative of the father, and equally

A person cannot gain a settlement by hiring and service with the son of a certificated man continuing to reside in the certificated parish with his mother after the father's death, as part of her family; though the son were of age, and carrying on business for himself; such circumstances not amounting to an emancipation.

(*c*) *Post*, pl. 762.

protected by the certificate. This comes, then, directly within the principle of *Rex* v. *Hampton* (a); where it was holden that an apprentice to the widow of a certificated man, could not gain a settlement in the certificated parish after the husband's death. If this question had come now to be decided for the first time, I should have been prepared to decide it on the plain words of the stat. of *Anne*, referring to the stat. 8 & 9 *W.* 3. *c.* 30. and 9 & 10 *W.* 3. *c.* 11., which have been broken in upon by many cases, laying down rules of construction much less plain than the words of the statute itself. The stat. 9 & 10 *W.* 3. *c.* 11. speaks of two methods only by which any person coming into a parish with a certificate shall by any act whatsoever be adjudged to have procured a legal settlement there; those are by taking a tenement of the yearly value of 10*l.*, or by executing some annual office within the parish. Then the stat. 12 *Ann. st.* 1. *c.* 18. § 2. enacts, that "if any person shall be "an apprentice bound by indenture, or be a hired servant to any "person who *came into* (which extends to such as came into the "parish with the person certificated) or *shall reside* in any parish "by means or licence of such certificate," (which includes such persons as come into the parish afterwards, and reside under the protection of the certificate); "and not having afterwards gained "a legal settlement there," (which was in allusion to the methods pointed out by the stat. 9 & 10 *W.* 3. *c.* 11.) "such apprentice or "servant shall not be adjudged thereby to have a settlement in "such place," &c. The object of the legislature by these acts certainly was to protect the certificated parish from sustaining any new burthen by persons gaining settlements there who were residing there upon the faith of these certificates, except by one or other of the methods pointed out. I am, therefore, decidedly against extending the construction of the statutes further than it has been carried. Now, who can be considered as a person residing by means or licence of a certificate, if the son of a certificated man continuing to live with his father's widow in the certificated parish is not such a person? If, as in the *Hampton* case, the widow of a certificated man were privileged to continue in the parish under the certificate after his death, as part of his family; so must his son, by the same rule, who continued part of the same family. There was no emancipation in this case to distinguish it from the other: but it comes expressly within the principle of the *Hampton* case, and, what is more material, it comes directly within the meaning of the statute of *Anne*. — GROSE J. A person is within the words of the statute of *Anne* who is serving another residing in any parish by means or licence of a certificate. Now here, *R. S.*, the son, either lived there as part of his father's or his mother's family during all the time: and it is not denied that both the father in his lifetime and the mother after his death were residing in *S.* under the certificate. There was no emancipation of the son, no taking of another house for himself, nor any thing of the sort which occurred in *Rex* v. *Heath* (a); and there is no pretence for saying that his going out for a few weeks at harvest time would operate as an emancipation. We ought to be careful not to create more doubts by refining away the meaning of the statutes and prior decisions upon the subject. — LAWRENCE J. declared himself of the same opinion. — LE BLANC J. We are now called upon to put a construction upon the statute

(a) *Post*, pl. 744.

(a) *Post*, pl. 762.

12 *Anne*; and as, in the only case which turned on that branch of the statute, *Rex* v. *Hampton*, it was holden that the widow after the husband's death was still protected by the certificate as part of his family, and therefore that her apprentice serving her could not thereby gain a settlement in the certificated parish; so neither can the servant to the son continuing part of the same family gain a settlement there. — Both orders quashed.

VII. *Evidence of Apprenticeship.*

598. *Rex* v. *East Knoyle*, *T. T.* 13 & 14 *G.* 2. *Burr. S. C.* 151. — The Sessions-order thus stated the case. And it appears to this Court, upon the evidence now given, that the said *J. B.* was bound an apprentice, by indentures, to one *W. W.*, of the parish of *E. K.* aforesaid, cordwainer (which is above 50 miles from *London*); and that he served three years at *E. K.* aforesaid under the said apprenticeship; at which time the said *W. W.*, the master, died; and that the sum of 5*l.* (being the full consideration-money) was paid by his father with the said apprentice for such his binding: but the indentures of apprenticeship were not produced; neither did it appear to this Court, whether the duty of 6*d.* in the pound directed to be paid by the statute 8 *Anne*, *c.* 9. was paid, or whether the said indentures were stamped, as the said act requires. — OBJECTION. It appears that the justices have admitted and gone upon evidence which was not legal. They have admitted parol evidence of an indenture, which they state not to have been produced, and have not given any reason why it was not produced; nor did it appear to them that the duty was paid, or whether the indentures were stamped according to 8 *Anne*, *c.* 9. — But PAGE and CHAPPLE Js. (the only two judges in Court), over-ruled the objection, and refused to make a rule to show cause. For it is stated, that it appeared to them that he was bound an apprentice, &c., and it is not necessary that this evidence should appear to us. Perhaps the indenture was lost: and in that case could the justices receive no other evidence of the binding? And as to the duty and the stamp, they do not say the duty was not paid, or that the indenture was not stamped.

The Sessions may receive parol evidence of an apprenticeship, in order to draw their conclusion of the fact that the binding was by indenture.

599. *Rex* v. *Holbeck*, *M. T.* 16 *G.* 2. *Burr. S. C.* 139. — The pauper was born in *G.*, then the place of his father's settlement; at the age of nine he was put an apprentice by the churchwardens and overseers of the poor of *G.* to *S. G.*, of the same place, by indenture, to serve till he attained the full age of 24 years; and the indenture being produced, the same appears not to be upon stamped paper. — LEE C. J. I think the indenture cannot be available in evidence in any Court, by the express words of the act of 5 *W. & M. c.* 21. *s.* 11. which stands unrepealed by any of the subsequent acts. And yet this indenture was necessary evidence to make out the proof of a binding by indenture; for that binding could be no otherwise proved than by the indenture. But this indenture being unstamped, was not admissible as a proof of the thing; it could not be given in evidence, or admitted to be available. And yet it must be taken, upon the state of this case, that the indenture, though unstamped, was received in evidence by the Sessions. Therefore, the order of the two justices made for removing the paupers to *G.*, the pauper's original settlement, ought to be

The binding of an apprentice can only be proved by the indenture.

See the case of Rex *v.* St. Paul, Bedford, *ante*, pl. 575.

affirmed, and the order of Sessions quashed.—THE THREE OTHER JUDGES concurred.

Parol evidence cannot be received of an indenture of apprenticeship. Rex v. Castleton, *post*, pl. 603.

600. *Rex* v. *St. Helen's*, *T. T.* 22 & 23 *G.* 2. *Burr. S.C.* 735.—The order of Sessions, among other facts, stated, that *Hudson* gave evidence, that *Joseph Hutt*, her son, in 1733, was bound apprentice to his grandfather, by indenture, for seven years; that the indenture was delivered into the custody of the grandfather, as she had been informed by her son; that she never saw the indenture herself, and knew nothing of it, but from the information of her son: that it was reputed in the family that her son was his apprentice; that he was so described in the grandfather's will: that it further appeared upon evidence, that *Joseph Hutt* served his grandfather five years in *St. H.*, under the indenture; that *William Hutt*, the grandfather, found and provided for him, during the five years, in clothes and necessaries; that the grandfather died in the year 1738, leaving *Martha Hutt*, his widow and executrix, and *John Hutt*, his son; that *B.*, by the order of the parish of *St. S.*, in *December* 1748, applied to *John Hutt*, who then lived with his mother at *A.*, in the house where the grandfather died, and where his goods and effects were, to know whether he had in his custody any indenture of apprenticeship between *William* and *Joseph Hutt*; that *John Hutt* told him he could not find it; that *B.* did not inquire who was the executor or representative of the grandfather; nor did it appear that he made any other application or search to discover and find out the indenture; nor was any evidence given that said indenture was lost, save as aforesaid: and the indenture was not produced in evidence. That it further appeared upon the evidence of *John Hutt*, an inhabitant and parishioner of *St. H.*, that he was employed by his father, *William Hutt*, to draw an indenture of apprenticeship between his said father and the said *Joseph Hutt*; that he did, upon a common sheet of paper which was not stamped, copy the form of an indenture from an old one, only altering the names; that he and one *G.* were witnesses to the said indenture; but that it was not stamped; that *Joseph Hutt*, upon the death of *William Hutt* in 1738, refused to serve *Martha*, the widow and executrix of the said *William Hutt*, as an apprentice, on account of the said paper-writing not being stamped. Then no other evidence was given of *Joseph Hutt* living an apprentice to the grandfather, nor was any other settlement proved to be gained by *Joseph Hutt* than as aforesaid. One of the objections to this order was, that there is only *parol evidence* of *an indenture*, which ought itself to have been produced.—THE WHOLE COURT were clearly of opinion, that there was not enough stated to show that there was a *binding* within the act.

A, married at the time of his being a soldier, when, being examined agreeably to the mutiny-act, he deposed, that he had gone apprentice to B, and lived with him five years. His wife deposed before the

601. *Rex* v. *St. Michael's, Bath*, *H. T.* 13 *G.* 3. *MSS.*—Two justices removed *Mary Taylor*, and her infant child, from the parish of *St. P.* to *St. M.* The Sessions confirmed the order, and state the following case:—That it appears by the oath of *Mary Taylor*, one of the paupers, that she was married about four years ago at *B.* to one *Richard Taylor*, then a corporal of foot: that he stayed there with her only about three quarters of a year, and then left her: that she has heard her husband declare, that he was born about 26 years ago at *C.*: that when he was 14 years of age he served an apprenticeship to one *Morley*, whose christian name was *Thomas*, as she believed, who lived in *St. M.*, and served the said *Thomas Morley* about four years: that he then run away and

listed for a soldier; went to *Ireland*, came from thence to *B.*, and married her at *St. P.*'s church at *B.*: that she does not know what is become of her said husband, having never seen or heard of him since: that it appeared, that the examination of the said *Richard Taylor* was taken in writing shortly after his said marriage, agreeably to the mutiny-act; which writing was produced, and is in these words: "Town of *B.*, to wit. The examination of "*Richard Taylor* on this act saith, that he was born in the parish "of *C.*; there he resided about six years; from thence went to "school to *M.*, in said county, above four years; from thence re-"turned home to his mother until about the age of 14 years; from "whence he went apprentice to *James Morley*, as a plasterer, "at *St. M.* in *Bath*, with whom he lived five years and a half; "after which he enlisted into the 63d regiment, where he now re-"mains. Taken before us the 12th *October* 1768."—It farther appeared by the evidence of *Robert Morley*, that there is not at present a person of the name of *James Morley*, a plasterer, in *St. M.*; but that one *James Morley*, a plasterer, in *St. M.*, died there about eight years ago: that the said *Robert* worked with the said *James* as a journeyman until his death, but sometimes was absent three quarters of a year together: that he was perfectly acquainted with said *James Morley*, and has often heard him say that he never would take an apprentice, for he was a single man, and only a lodger himself: and said *Robert* says, to the best of his knowledge, that said *James Morley* never had an apprentice in his life: that *John Morley*, brother of said *James*, who is a plasterer, never had an apprentice, to the best of his knowledge, and has divers times given, in the hearing of the said *Robert*, for reason, that being all his life a single man and a lodger, he never would take an apprentice: that there appeared no evidence that the said *Richard Taylor* had been bound an apprentice, other than is contained in his aforesaid examination and declaration given in evidence by his wife; neither did it appear, that said *Richard Taylor* had gained any settlement in said parish of *St. M.*'s other than as aforesaid.—LORD MANSFIELD: Here the party for quashing the Session-order apply to do so, because the justices have drawn a wrong conclusion from the evidence. I do not think they have drawn a wrong conclusion. The presumption from a man serving four years as an apprentice is, that he was bound.—ASTON J. In the case of *St. H.* it was found that there was no indenture, and it did not appear that any inquiry was made after an indenture, therefore the Court had no ground to presume a binding. Here the man is run away, and he swore that he was an apprentice; the question is, Whether the Court will imply that there was an indenture? There is a very reasonable presumption of a binding, and every thing is to be presumed in favour of a settlement.—WILLES J. We are not to presume that the apprenticeship was by parole; the presumption is the contrary way. In the *King* v. *Meadand*, which was alluded to, it was stated to be an apprenticeship by parole, for quashing the order.—ASHHURST J. of the same opinion.—Rule discharged.

Sessions, that she had heard him speak to the same purpose. This deposition of A, and evidence of his wife, were held to be sufficient evidence to prove an apprenticeship. See 5 T. R. 704.

An indenture of apprenticeship coming out of the hands of the opposite party, after notice to

1802. *Rex* v. *Middlezoy*, *T. T.* 27 *G.* 3. 2 *T. R.* 41.—The paupers, *M.*, *S.* his wife, and *C.* their child, were removed from *M.* to *B.* The Sessions quashed the order, subject to the opinion of this Court on the following case:—The appellants having proved a

produce it, must *primâ facie* be taken to be duly executed, and must be received in evidence without proof of the execution.

hiring and service of the pauper for a year in the parish of *M.*, the respondents proposed to show that a settlement could not be gained thereby, by reason of subsisting indentures of the pauper's apprenticeship to one *W.* of *S.*, at the time of such hiring and service. They had given a notice to the appellants of the substance, and to the effect following, *viz.* to produce, at the trial of the appeal, a certain indenture of apprenticeship, bearing date on or about the 10th day of *January* 1784, where *M.*, the pauper, was put and placed apprentice to *W.*; and an indenture to that purport was accordingly produced in Court by the appellants, with proper seals and signatures, but no subscribing witness thereto; and no evidence was adduced by the respondents to prove the sealing and delivery thereof; whereupon it was contended, on the part of the appellants, that the same could not be given in evidence without proving the execution thereof; to which it was answered, that, coming from the hands of the appellants, it ought to be received in evidence against the party producing it, without proof of the execution. The Court, being of opinion that proof ought to be given of the due execution of the said indenture, refused to admit the same in evidence without such proof. The respondents then produced the counterpart of the said supposed indenture, which they proved to be duly executed, and tendered the same in evidence: but the Court also refused to admit the said counterpart. The pauper served the said *W.*, in the parish of *S.*, for more than two years subsequent to the date of the said supposed indentures of apprenticeship; and afterwards, before the term thereof expired, without any consent of the said *W.*, served for a year as aforesaid, in the parish of *M.*, under a hiring to one *S. W.* — ASHHURST J. The Sessions have done wrong in refusing to admit this evidence, because, as the indentures of apprenticeship came out of the hands of the appellants, they were concluded from saying they were not properly executed; therefore the indentures ought to have been received, and, consequently, the order of Sessions must be quashed. — BULLER J. The only question, as a general one, in this case is, Whether the indentures of apprenticeship should have been received in evidence? I do not go the whole length of saying, that the production of them by the appellants was conclusive against them, but undoubtedly they ought to have been received. In civil actions, where a plaintiff wishes to give in evidence a deed in the defendant's custody, he gives the defendant notice to produce it; and the deed, when produced, must *primâ facie* be taken to be duly executed, because the plaintiff, not knowing who are the subscribing witnesses, cannot come prepared at the trial to prove the execution of the deed. Therefore an instrument coming out of the hands of the opposite party, must be taken to be proved. If, indeed, there be any fraud in the case, the other party will not be precluded from impeaching it. But in this particular case it appears, that if the appellants had not produced the indentures at all, the counterpart must have been admitted in evidence, which would have been sufficient. The next question is, Whether this case should be sent down to the Sessions to be restated? Now, strictly speaking, the justices at the Sessions ought to find facts, and not the evidence of those facts. But we all know, that of late years this Court has not been very astute in finding out trivial objections in the manner of stating Sessions-cases, where enough appears to warrant the Court to

decide according to the justice of the case. Now here there cannot be any doubt what the merits of this case are, and what would have been the effect of the indentures if they had been received in evidence; it must have appeared as a fact, by a reference to the dates, that at the time of hiring and service the pauper was an apprentice. — GROSE J. This evidence should undoubtedly have been received, though it might not be conclusive, as if it had been impeached on the ground of fraud; but still it was good evidence. If the indentures had not been produced, the counterpart would have been sufficient evidence. Then the question is, Whether we should send this case back again to the Sessions at the request of the parties who made this sort of objection? It seems to me that the objection was frivolous at the Sessions, and the doubt, if any, was removed by the offer of the respondents to prove the counterpart. On strict grounds of law the Sessions have done wrong, and according to the substantial justice of the case we ought not to send it down to be restated. — PER CURIAM: Order of Sessions quashed.

Parol evidence may be given to show that an indenture once existed, and that it is lost or destroyed.

603. *Rex* v. *Castleton*, *E. T.* 35 *G.* 3. 6 *T. R.* 236 — Two justices removed *P.* from *C.* to *B.*, as the place of her last legal settlement. On appeal, the Sessions quashed the order, subject to the opinion of this Court, on the following case: — *P.*, the pauper, was alleged to have been bound apprentice to *Timms*, of *C.*, by indentures bearing date in or about the year 1780. It was proved on the part of the liberty of *C.*, that there were two parts of the indenture of apprenticeship, one part whereof remained with the parish-officers of *C.*, and which had been destroyed, and the other part was given to the said *Timms*, who delivered the same to Miss *Taylor* of *B.*, at the time of the assignment hereinafter mentioned. Application was made to Miss *Taylor*, not then or now residing at *B.*, for that part of the indenture so delivered to her, who on such application said that she could not find the same, nor did she know where it was. Miss *Taylor* is living, but was not subpœnaed to the Court of Sessions as a witness to produce that part of the indenture which had been delivered to her, or to give any account of the same being lost. *Timms* afterwards by parole assigned the pauper to Miss *Taylor* in *B.*; and the pauper, with *Timms's* consent, served her in *B.* upwards of 40 days. The Court of Sessions were of opinion, that the above was not sufficient evidence of the indenture of apprenticeship. The only question is, Whether that part of the indenture of apprenticeship which was delivered to Miss *Taylor* is properly accounted for? — THE COURT thought the case too clear for argument: that if the indenture could not be produced, evidence must be adduced to show that it was lost or destroyed. Here it was traced to the hands of Miss *Taylor*, and no further evidence was given to show what had become of it. — Order of Sessions confirmed.

An agreement between the first and second master cannot be received in evidence, if not stamped, nor can parol evidence thereof be given.

604. *Rex* v. *St. Paul, Bedford*, *M. T.* 36 *G.* 3. 6 *T. R.* 452. — On the 29th of *December* 1777, the pauper, *P.*, was bound apprentice for seven years, to *Robinson*, of *K.*, and a fee of 15*l.* was paid to the master by the trustees of the *Bedford* charity. The pauper served *Robinson* in *K.* till *October* 1782, when they removed together to the parish of *Biddenham*, where the apprentice continued till the death of his master, on the 10th of *October* 1783. On the 24th of *November* following, an agreement was entered into between

N., the executrix of *Robinson* and *J. Robinson*, and indorsed on the indenture, by which *N.* assigned over the apprentice to *J. Robinson* for the remainder of the term, and *Robinson* agreed to teach the apprentice the same trade, and to provide him with board and lodging till the end of the term. This agreement was signed by *N.* and *J. Robinson*, but not stamped. Immediately after the assignment the pauper went into the service of *J. Robinson* in *K.*, and continued to reside there with him without interruption till *September* 1784. The indenture being proved, the respondents offered the written agreement in evidence, which the Court of Sessions rejected, because it was not stamped. The respondents then offered parol evidence of the verbal agreement by the executrix with *J. Robinson*, that the pauper should serve the remainder of the term of seven years under the indenture with *Robinson*, and of the pauper's consent; this evidence the Court also rejected. — LORD KENYON C. J. The question here is a question on evidence, whether the executrix of the master did or did not consent to the service with the second master: the Court of Sessions were of opinion that the instrument which was produced to prove the consent could not be received in evidence, because it was not stamped; and I think that the Sessions did right to reject this instrument. And when an attempt was made to give parol evidence of the agreement, they also did right in refusing to receive it, because the agreement was reduced to writing; and, if so, there was no evidence to show any consent that the apprentice served the second master with the consent of the executrix of the first. — The rest of THE COURT were of the same opinion, and the order of Sessions, quashing the order of two justices, by which the paupers were removed from *St. P. B.*, to *K.*, was confirmed.

But parol evidence of an independent fact may be received though it show that an unstamped agreement intended an apprenticeship.

605. *Rex* v. *Laindon*, *M. T.* 40 *G.* 3. 8 *T. R.* 379. — The pauper being legally settled at *L.*, went into the parish of *I.* in *November* 1792, and after being one month upon trial with *M.*, a carpenter, in *H.*, he entered into the following unstamped written agreement, witnessed and subscribed as under: "*November* 20th "1792. I *M.* do hereby agree with *C. to serve me* three years *to* "*learn the business of a carpenter;* the first year to have 1*s.* 2*d.* "per day; the second year to have 1*s.* 6*d.* per day; the third year "1*s.* 10*d.* per day; witness my hand, *J. C.*, *J. M.*; witness *R. B.*" The pauper proved, at the time of signing the above agreement, he agreed to give *M.* the sum of 3*l.* 3*s.* as a premium to teach him the said trade, and paid *M.* 1*l.* 15*s.* which, with 1*l.* 8*s.* due for wages during the month of trial, made 3*l.* 3*s.*; *and that he was not to be and was not employed in any other work than that of a carpenter.* The pauper worked with and served *M.* under this agreement the whole three years, and slept the last 40 nights in the parish of *H.*, and considered himself as an apprentice under the said agreement; but he thought himself at liberty to leave his master if he used him ill. The counsel for the appellants objected to the parol evidence, explanatory of the above written agreement, being received, which objection was over-ruled by the Court. — LORD KENYON C. J. The two justices who made this order of removal, and the justices at the Sessions who confirmed it, were of opinion that the pauper was not hired to serve *M.* as a yearly servant, but that the relation which was created between them was that of master and apprentice. The opinions of the

magistrates ought not, indeed, decidedly to influence our judgment, as they have referred the case to us: but when a certain opinion has gone abroad founded on the decisions of this Court, upon which the magistrates have been acting, it ought not lightly to be departed from. The first question that arises in this case is on the admissibility of the parol evidence. This parol evidence was not offered to contradict the written agreement, but to ascertain an independent fact; and, I think, it was properly received in evidence. — LAWRENCE J. The first question raised by the counsel in support of the rule is, that the Sessions ought not to have received the parol evidence, because it contradicted the written agreement: but it was not offered for that purpose, but to ascertain a fact collateral to the written instrument, in order to explain the intention of the parties, the instrument being in some measure equivocal. — LE BLANC J. concurred.

In order to establish a settlement by apprenticeship, it was proved that the indenture was only of one part, and that, upon application to the pauper, who was then ill, and died soon afterwards, to know what had become of it, he declared that when the indenture expired, it was given to him, and he burnt it long since; and it was also proved that inquiry was made of the executrix of the master, who said that she knew nothing about it: Held, that this proof was sufficient to let in parol evidence of the contents of the indenture.

606. *Rex* v. *Morton*, *E. T.* 55 *G.* 3. 4 *M.* & *S.* 49. — Removal from *H.* to *M.* Order confirmed, subject, &c. — The pauper served one *B.* as an apprentice in *M.* The indenture was not produced, but a witness was called, who proved that, having heard that the pauper had the indenture, he went to him to inquire what had become of it. The pauper, who was then very ill, and died soon afterwards, declared that when the indenture expired it was given to him; that he had it in his possession after the expiration of the apprenticeship, but had burnt it long since, conceiving it of no use. It was also proved, by a witness to the execution of the indenture, that there was only one part executed. Proof was also given that inquiry had been made of the daughter and sole executrix of the master, and that she had answered that she knew nothing about it; but no evidence was given of any search having been made by any one, either amongst the papers of the master, or those of the pauper. It was objected by the township of *M.*, that sufficient search had not been proved to have been made, or due diligence used, to find the indenture. The Sessions overruled the objection, and the township of *H.* then gave parol evidence of the due execution and contents of the indenture, and of the service under it. And the question now made was, Whether there was sufficient proof of the loss to let in this parol evidence? — LORD ELLENBOROUGH C. J. The making search, and using due diligence, are terms applicable to some known or probable place or person, in respect of which diligence may be used. If what the pauper said, when he was inquired of, was not admissible, then the indenture is not traced into his hands, and being *functus officii*, there was no particular reason why it should be with him. If, on the other hand, what he said be admissible, then, although it may not amount to proof of the fact that the indenture was destroyed by him, yet it may be so far evidence as to afford a reason why further search was not made with him. Suppose this had been an inquiry of a merchant for some commercial purpose, and he had given a similar answer, would it not have been sufficient? It is like a non-production upon request, and the party accounts for it. Not that I mean to pronounce that this was evidence of the fact of the indenture having been burnt by the pauper, though there might be some ground for saying that, as the pauper was perfectly free from all interest, he had no bias to make the declaration he did. But, without giving it such an

effect, it is evidence that such information was obtained, as precluded the necessity of any farther search in that quarter, and discharges the parties of any laches in not making it.—Le Blanc J. In *Rex* v. *Castleton* (a), there was proof of the existence of one part of the indenture; it was traced into the possession of a particular person, and no farther proof was given to show what had become of it. Here is no proof that the instrument ever existed in the possession of the pauper, unless his declaration is to be taken as evidence; and if it is, we find him declaring, in the same breath, that it no longer existed. Then follows the application to the executrix of the master, and her answer is, that she knew nothing about it. It seems to me, therefore, that this evidence showed that the parties had used reasonable diligence, and that there is nothing in the objection; and I am a little surprised that the Sessions should have thought this a fit subject for a case.—Bayley J. Application has been made to all parties likely to have or know any thing of the instrument, and no trace of its existence is obtained. Suppose there had been a dozen places at which it might possibly have been traced, would it not have been enough to make inquiry at each, or must the parties have insisted on making search at each? In *Rex* v. *Castleton*, the indenture was traced into the hands of an individual, who, upon inquiry made, did not say that she had not got it, but only that she could not find it.—Dampier J. The answer given to the inquiry in *Rex* v. *Castleton*, was a reason why the party should have proceeded to make farther search, because it was proved that the indenture once existed in the hands of the individual, and she did not say that she had it not, but only that she could not find it. But here the reason is all the other way; for when the pauper, by whose information alone the parties were acquainted with his having had the instrument, at the very same time declared that it was burnt, why should they go on to search among his papers? This evidence, therefore, affords a reasonable ground for not pursuing their search with the pauper, whereas the evidence in *Rex* v. *Castleton*, showed that a farther search was necessary.—Order of Sessions confirmed.

(a) *Ante*, pl. 603.

Where, upon appeal against an order of removal, the appellants, in order to show a settlement in a third parish, called the pauper to prove that he was bound apprentice, by indenture, to D., and served in the third parish, and then produced the indenture; but failing to prove the death of the subscribing witness, so as

607. *Rex* v. *Harringworth*, *M. T.* 56 *G.* 3. 4 *M.* & *S.* 350.—Removal from *G.* to *H.* Order confirmed, subject, &c.—The birth settlement of the pauper, *W. P.*, having been proved to be in *H.*,—*H.*, for the purpose of showing that he had gained a subsequent settlement in *O.* by apprenticeship, called *W. P.*, who stated, that in 1790 he was bound apprentice by indenture to one *D.* of *O.*, and duly served his time there with *D.* They then produced an indenture, purporting to be executed by *W. P.*, by *W. P.*'s father, and *D.*, and to be attested by two witnesses, and called persons to prove the deaths of those witnesses, but failed in proving the death of one of them to the satisfaction of the Court, so as to intitle them to prove his hand-writing, whereupon they tendered *W. P.* as a witness to prove his own execution of the indenture as well as that of his father and his master. The Sessions were of opinion that this witness could not be received.—Lord Ellenborough C. J. There hardly exists a general rule out of which does not grow, or may be stated to grow, some possible inconvenience from a strict observance of it. Nevertheless, the convenience of having certain fixed rules, which is far above

any other consideration, has induced courts of justice to adopt them, without canvassing every particular inconvenience which ingenuity may suggest as likely to be derived from their application. The learned counsel who last sat down has talked of the serious inconvenience that will ensue in settlement law, if, in a case like the present, the party to the deed is not called to prove it. I know of none that is a greater or more serious inconvenience than to depart from a clear established rule of law, that a party who would prove the execution of any instrument that is attested, must lay the ground-work by calling the subscribing witness to prove it, if he can be produced, and is capable of being examined. His testimony, indeed, is not conclusive, for he may be of such a description as to be undeserving of credit, and then the party may go on to prove him such, and may call other witnesses to prove the execution. The cases have even gone the length of punishing the subscribing witness criminally. But here the only question is, Whether the parties, who seek to prove the execution of this indenture, must not make their way to what may be called secondary proof, through the medium of those witnesses who are the plighted witnesses to the transaction, by first disposing of their testimony? If there ever was a case in which the rule might reasonably have been relaxed, it surely was the case of *Abbott* v. *Plumbe*, 1 *Doug.* 216, yet in that case the Court held the rule to be inexorable. The rule, therefore, is universal, that you must first call the subscribing witness; and it is not to be varied in each particular case by trying whether in its application it may not be productive of some inconvenience, for then there would be no such thing as a general rule. A lawyer who is well stored with these rules would be no better than any other man that is without them, if by force of mere speculative reasoning it might be shown that the application of such and such a rule would be productive of such and such an inconvenience, and therefore ought not to prevail. But if any general rule is to prevail, this is certainly one that is as fixed, formal, and universal, as any that can be stated in a court of justice, and there is nothing on which to supersede it in this case but a suggestion of some supposed inconvenience. It does not follow, it is said, that because the subscribing witnesses are the plighted witnesses to prove the execution, they must needs be the best witnesses, for others may know better or more of the transaction than they; but inasmuch as they are the plighted witnesses, the knowledge they have upon the subject is essential, and if it can be procured, must be forthcoming. It seems to me, therefore, that unless we are to quit sight of the rule, for the purpose of going into the *rationale*, or convenience and inconvenience of it, in each particular case, as the ingenuity of persons may suggest, there is no reason for doing it in the present case. I confess that I am against the whole scope of the argument and its conclusions. — Order of Sessions confirmed.

to entitle them to prove his hand-writing, proposed to call the pauper to prove his own execution, and that of the other parties to the indenture, which evidence the Sessions rejected: Held, that the Sessions did well, for the rule which requires the subscribing witness to be produced, or his absence accounted for, applies as well to settlement cases as others.

CHAPTER VIII.

SETTLEMENT BY ESTATE.

I. *The Statute.*
II. *Of the Kind of Estate.*
III. *Of the Value of the Estate.*
IV. *Of the Residence necessary.*
V. *Of certificated Persons.*

I. *The Statute.*

9 *G.* 1. *c.* 7. §. 5.

II. *Of the Kind of Estate.*

A copyhold estate for life, though under the value of 10*l.* a year, is a sufficient estate to confer a settlement.

S. C. Foley, 257. S. P. Rex *v.* Burclear, *post*, pl. 681.

608. *HARROW v. Edgeware, E. T.* 11 *Ann.* EDITOR'*s MSS.* — *C.* having gained a legal settlement in the parish of *H.*, afterwards purchased a copyhold estate for his own life, worth 1*l.* 5*s.* a year, in the parish of *E.*, to which estate he was regularly admitted. He removed from *H.* to *E.*, and lived on this copyhold estate near five years, and until the day of his death. His wife was afterwards admitted to the estate, and lived thereon till she died, leaving three surviving children, who in a short time became chargeable to the parish, from whence they were removed by two justices to the parish of *H.*; and the Sessions, on appeal, confirmed the order, and stated the above case. — NORTHEY: It has been constantly held, that a person who is in possession of a freehold estate cannot be removed from it, although it be under the value of 10*l.* a year. The reason for passing the statute 13 & 14 *Car.* 2. was to prevent persons from gaining settlements whose circumstances were so extremely indigent that they could not get credit for a house of 10*l.* a year. The legislature, indeed, seems to have had leasehold estates only in contemplation, but a man who can purchase the freehold of an estate of 1*l.* 5*s.* a year, may be fairly presumed to be of equal ability and credit with a man who only rents a house of 10*l.* a year, and therefore such a man is not within the mischief which the statute was intended to prevent. — RAYMOND: Admitting that *C.*, the father, could not be removed from his estate, yet neither he nor his children gained any settlement in *E.* by residing thereon; for although it may seem hard to prevent a man from living on his own land, yet as it was not of the value required by the statute, the parish shall not be chargeable by his inhabitancy, whose coming it was out of their power to prevent. The estate was only for his own life, and having determined by his death, his children became thereby removable in the same manner as they would have been if it had been a leasehold under 10*l.* a year. Though the father could not be removed, yet he gained no settlement by residing thereon, and as the children could not gain any settlement through him, they

were removable on the expiration of the estate. If this species of estate should be permitted to confer a settlement, great inconveniences would arise, and parishes might be burthened without a possibility of redress; for should the lord of a manor take any pique against the parish, he might grant leases of one, two, or three shillings a year out of the wastes of the manor to a number of poor indigent persons, and thereby bring intolerable burthens on the parish. — PARKER C. J. A parochial settlement is nothing more than the privilege of living irremovable in the parish. A man who has an estate for life, or an estate of inheritance of his own, cannot be removed from it, although in value it is under 10*l.* a year. It therefore follows, that where a man does so live he gains a settlement for himself and for the children in his family. — POWELL J. If this had been the grant of a copyhold for years, it might, as it is under the value of 10*l.* a year, have been within the reason of the statute; but as it was an estate for life it certainly is not. The father clearly gained a settlement in *E.* by residing 40 days on this copyhold, and the children must of necessity be settled in the parish in which their parents are settled, until they have acquired settlements for themselves, which in the present case they were not of an age to do. The argument respecting the possible inconveniences parishes may suffer from such estates being held to confer settlements, loses its weight, when it is recollected that lords of manors cannot create new copyholds, nor by 31 *Eliz. c.* 7. erect new cottages, without laying four acres of land to each, and it is not much to be feared that lords will give away, merely from spleen, such quantities of land, especially as the land itself would defeat the intended effect of such grants, by preventing the possessors from requiring parochial relief. — EYRE J. The distinction attempted to be made by Mr. *Raymond* between being settled and not being removable, is imaginary, for a settlement is nothing but the privilege of living immovable (*a*); and accordingly both the orders were quashed.

609. *Mursley* v. *Grandborough*, *M. T.* 4 *G.* 1. *Stra.* 97. — *Featherstone*, by indenture dated the 24th of *September* 1607, demised and granted to *Eddin*, his executors, &c. one cottage with the appurtenances of the yearly value of 1*l.* 10*s.* in *M.* for 99 years at 1*s.* rent. On 3d *August* 1689, *E.* assigned to *G.* in trust for *M.* his wife for life, and then to *W. E.* his son for the residue of the term; *R.*, *M.*, and *W.* died, and *S.* the wife of *W.*, as admininistratrix, became entitled to the term, and on *May* 11, 1709, in consideration of 15*s.* demised to *Eymes*, the same cottage (except one bay of building, being the south part thereof, with a leaftowe for an habitation for herself) for 24 years at a pepper-corn rent; and she lived in that part of the premises so reserved, and married *C.*, the present pauper. — PER CURIAM: This is not a case within the intent of the 13 & 14 *Car.* 2. *c.* 12. which was to prevent persons running up and down from one parish to another, till they become vagabonds. But a man who comes to settle upon his own is not to be considered in that view; and be it for *life* or *years*, the law is the same. This is not a taking a tenement under 10*l. per annum*; for the 1*s.* is not reserved as a rent, but only an acknowledgment usually paid on long leases. The case of a copy-

The husband of an administratrix who is entitled as a *trustee*, to a lease for years, by a residence thereon for 40 days, gains a settlement.

1 Sess. Cas. 122. See Rex *v.* Stone, *post*, pl. 640.

(*a*) But see Rex *v.* Leeds, *post*, pl. 619., and Rex *v.* Aythrop Rooding, *post*, pl. 616.

held is stronger than this, for that is but an estate at will. The way to make him chargeable is, to strip him of his own, for he may not be able to let it.

If a man build a cottage upon a waste without licence, and, after 30 years' quiet enjoyment, die possessed, his heir at law gains a settlement by residing 40 days in such cottage after his ancestor's death.

S. C. Mod. 287. 2 Sess. Cas. 121.

610. *Ashbrittle* v. *Wyley*, *M. T.* 11 *G.* 1. *Str.* 608. — Thirty years before the removal *Card* built a cottage upon the waste in *W.* belonging to the Earl of *P.*, and lived on it till his death, about three years since, when it descended to his daughter, then married to *Darby*; they entered and enjoyed it three quarters of a year, and then sold the possession of it to *Wyvel*, who enjoyed it ever afterwards without any molestation from the lord; but no original grant appeared.— ET PER CURIAM: He lived 40 days in the capacity of a person irremovable, and that is a settlement of itself. Here has been an enjoyment for 30 years, during all which time the lord never claimed any thing. The least than can be made of it is a title by disseisin, and a descent is cast. This man had undoubtedly a title against all the world but the lord, and even against him it may be doubtful after so long a possession. In ejectment, he might either make or defend a title by 20 years' possession. Therefore in this case there is no colour to determine against his right, when the lord does not think fit to impeach it; though if he did, it would never be allowed upon an *order of removal*, but upon an *ejectment* only.

The remainder of a term of 99 years, of a cottage of the value of 5*s.* a year, devised to the pauper by his father, will entitle him to a settlement by residing on such estate for 40 days.

Str. 983. 1 Sess. Cas. 200.

611. *Rex* v. *Sundrish*, *T. T.* 7 *G.* 2. *Burr. S. C.* 7. — *Perch*, by indenture dated 25th *March* 1701, demised to *Gates* a cottage with a garden, orchard, and backside, &c. in *H.*, for 99 years, at 5*s. per annum*; the 5*s.* was the full and most improved rackrent, for any thing that appeared to the contrary. *Gates* entered upon the cottage by virtue of the lease, and lived in it, under the lease, to the time of his death. By his last will he devised the said messuage and premises, and all other his estates both real and personal, to *T. G.* his son, his heirs, executors, administrators, and assigns, upon condition that he paid, or secured to be paid, to *Frances* his mother 20*l.* towards her maintenance, if she should live to expend that sum; and made him sole executor, and died. *T. G.* the son proved the will, and entered upon the premises by and under the lease and will, and lived therein until he was removed. But it did not appear that he had paid or secured the 20*l.* or any part thereof. *F.* the mother died in a very short time after *T.* the father. — THE COURT were unanimously of opinion, that this estate though a *leasehold* was his own estate; that he had come into it under his father's will; that it is, together with other things, charged with 20*l.* payable to his mother for her maintenance; and that in *Mursley* v. *Grandborough* (*a*) a leasehold estate, although it was not a beneficial lease of the whole, had been held sufficient to confer a settlement.

(*a*) *Ante*, pl. 609.

A son who, after his father's death, lives upon an estate for years during the remainder of a term, but does not take out administration until after the term ex-

612. *Rex* v. *Widworthy*, *T. T* 10 *G.* 2. *Burr. S. C.* 109.—*Board* removed into the parish of *W.*, and lived there with his father and mother in a cot-house of the yearly value of 1*l.* 10*s.* of which house his father then was, and for many years before had been possessed for the residue of a term of years determinable on lives; and of which he died so possessed, without a will, (his wife dying before him,) leaving the said *B.* and one other son, who was still living, and who took his distributive share, and part of his father's estate and effects, in goods. *B.*, after the death of his father, lived and continued in the possession of the house for five or six

years, and until the lease determined, which happened about a year and a quarter before the removal; after which time, and after the making the order of removal, he took letters of administration to the goods and chattels of his father. — PAGE J. At the time of making the order he had gained no settlement at *W.*; because nothing vested in him before administration was granted to him. If so, then the order for removing him to *F.* was a good order when made, and the Sessions ought not to have quashed it; though administration had been afterwards taken out; for they could not quash a good order, upon a matter which happened *ex post facto*; and if this administration really gained him a settlement, there ought to have been a new order of two justices to remove him back to *W.* When he was first removed from thence he had nothing to do with the cottage; for nothing vested in him till he took out letters of administration; consequently, if he gained a settlement at *W.* at all, it was gained subsequent to the making of the original order. But SECONDLY, he had it not at all in his own right, even after administration; nor does it seem to be such a sort of estate as would gain him a settlement. This is a cot-house of so small a value as 1*l.* 10*s.* a year only, holden upon the residue of a term of years determinable upon lives. In the case of *Ashbrittle* v. *Wyley* (*a*), there was a continuance of the quiet possession for 30 years and a descent cast. The pauper had a title against all the world except the lord of the waste; and it would be a good bar even against the lord, in an ejectment. There, the pauper clearly had such a possession as to be irremovable from it. But I apprehend that the pauper, in the present case, was removable even during the term; but afterwards he certainly was. — PROBYN J. The whole depends upon this single question, Whether the pauper was removable during the five or six years that he lived in this cottage? for I take the rule now settled and established to be, "that if the pauper come to an "estate by inheritance, or as executor or administrator, be it of "ever so small value, he is irremovable; and if he remain 40 days "in possession and inhabitancy, he gains a settlement." Now I take it, that the pauper in the present case was removable. His possession rested only upon a private agreement between him and his brother. If he had taken out administration during the interest, he had had a vested right (*b*); but taking out administration after the term expired could never give him an interest in the expired term, in which he had none during its subsistence. He was in possession merely as a tenant at will: he was removable by the parish, and his right would have been without foundation, if administration had been granted to any one else. Therefore he had no right at all till administration was granted. The case of *Wyley* was a strong case. That was a descent to the pauper after a possession of 30 years; which is a good title in an ejectment, and a presumption of an inheritance. It was *prima*

pires, does not gain a settlement by his residence on such estate. Cald. 111. 138. 211. Andrews, 4.

(*a*) *Ante*, pl. 610.

(*b*) So in the case of South Sydenham *v.* Lamerton, *ante*, pl. 193. *John Stiles* was possessed of a lease for years and died intestate. The question was, Whether the next of kin should be said to be settled there? And it was held that he should not, for that he had only a right which he must pursue by taking out letters of administration; but no right is settled or vested in him till an actual taking out. S. C. Sett. and Rem. 103. 10 Mod. 389. 1 Str. 57. See Rex *v.* North Curry, *post*, pl. 631.

facie a good title as heir at law: none but the lord could contest the right. And if a pauper live 40 days under a right which makes him irremovable, it gains him a settlement. — CHAPPLE J. was of the same opinion. For there was no time during the continuance of this lease, when the pauper was irremovable, and without remaining 40 days irremovable, a settlement could not be gained by him. And he observed, that there was no agreement at all between the brothers that the pauper should take this lease as his distributive share: or, at least, no such agreement appeared. It is only stated, that the other brother did take his share in goods; and *John* did live in the cottage; but it does not appear that this happened in pursuance of any preceding agreement that it should be so.

The son and heir of a *tenant by courtesy*, of an estate of 4*l.* a year, cannot, after his father's death, be removed from the parish where it lies, to another place of settlement, which his father had gained by renting above 10*l.* a year. Str. 1132.

613. *Rex* v. *Hasfield*, *E. T.* 13 *G.* 2. *Burr. S. C.* 147. — *Burford* the father of *Benjamin* and *Mary* the paupers, about 20 years since, intermarried with one *Potter*, by whom he had the said *B.* and *M.*, his only children. *M.* the wife was, at the time of her marriage, seised in fee of a messuage, garden, orchard, and about one acre and a half of meadow, in *T.*, of the yearly value of 4*l.* or thereabouts: *B.* and his wife, for many years after the marriage, and to the death of his wife, lived together in the parish of *T.*, upon the said freehold estate; and the children were born at *T.* during their father and mother's residence thereon. After the death of *M.* the wife, the estate descended to *B.*, as her son and heir, subject to his father's tenancy by courtesy. After the death of the wife the husband continued, with his said children, on the estate at *T.*; and afterwards took an estate of about 30*l.* a year, in the parish of *H.*, and removed thither with his two children, where he resided with them for one year and a half, and then died; on his death *B.*, who was then about six years and a half old, became seised in fee of the estate at *T.*, and he and *M.* his sister, having been in *T.* with their grandmother, their nearest relation, above 40 days, were removed from thence to *H.*; *B.* being about eight years of age, and *M.* about six years of age. — LEE C. J. *B.* is seised in fee of an estate in *T.*; and it is not material *quo animo* he came into that parish, or how long he has been in it. It is not a case within the statute of 13 & 14 *Car.* 2. *c.* 12., because having an estate of his own in the parish, he is not removable from it. It is not like the case where a man is to gain a settlement by residing 40 days in a place from whence he is irremovable. This last was the case of *Sowton* v. *Sydbury*, where the difficulty was upon the residence 40 days in a place where the man was to gain a settlement in respect of his freehold. But I think it clear, that this *B. B.* could not be removed from his freehold. — PROBYN and CHAPPLE Js. concurred that *B.* could not be removed from the parish where he had a freehold.

Rex v. Houghton Le Spring, *post*, pl. 678. Rex v. Dorstone, *post*, pl. 679.

The remainder of a term purchased for 47*l.* is a sufficient estate to confer a settlement. See S. C. more fully stated, *post*, pl. 683.

614. *Rex* v. *Stainfield*, *E. T.* 16 *G.* 2. *Burr. S. C.* 205. — *B.* took a lease of 20 square yards of land in *S.*, for the term of 999 years, under the reserved rent of 1*s.* a year, on which he built a house and outhouses, and afterwards sold the residue of the term for 16*l.* 10*s.*; the original lessor granted a new lease of the premises for the term of 999 years to the purchaser; afterwards the pauper repurchased the lease for 47*l.*, and the residue of the term was, on his paying the purchase-money, regularly assigned over to him; and after living on the premises for three years, he mort-

gaged them for 45*l.*: and THE COURT held them to be a sufficient estate to confer a settlement on the pauper in the parish of *S.*

615. *Rex* v. *Marwood*, *H. T.* 29 *G.* 2. *Burr. S. C.* 386. — The paupers, *C.*, and *M.* his wife, in 1733, were removed by an order of two justices, from *K.* to *M.*, as the place of their then legal settlement; which order was not appealed from. Some years after, the said paupers returning into *K.* without a certificate, were committed for such offence to Bridewell. Some time after, *S.*, father of the said *M.*, being possessed of a cottage-house, garden, and plot of ground in *K.* aforesaid, for the residue of a term of 99 years, then determinable on the death of one *J. S.*, (the consideration-money for the purchase whereof amounted but to 20*s.*,) by his deed-poll, dated 25th *July* 1749, in consideration of his natural love and affection to his said daughter *M.*, did give and grant the said premises (except the standing of a bed in one room, and a way to and from the same) to his said daughter *M.*, being then the wife of the said *C.*; to hold to the said *M.* for her life; and afterwards, upon trust for her daughter, during his interest therein. Thereupon the paupers returned again into the parish of *K.*; and entered thereon, and lived in such house; and possessed and enjoyed the said estate; and paid the high rent (10*s.* a year) for several years; until the lease determined by the death of *J. S.* — RYDER C. J. said he was extremely clear about this matter. The 9 *G.* 1. *c.* 7. was intended to prevent parishes from being fraudulently incumbered, under small fraudulent conveyances; and it only intended to exclude all purchases of cottages under the value of 30*l.* from giving a settlement longer than the continuance of the interest; for a man ought not to be hindered from living upon his own, and being irremovable from it, as long as his property continues, and he continues to reside upon it. There have been three questions introduced upon this act: one, on the meaning of the word "purchase;" the next, Whether the husband in this case be a purchaser, whatever his wife may be? and thirdly, Whether this consideration be a consideration under 30*l.* (supposing him to be a purchaser)? Now, first, this is not a purchase within the meaning of the act: for the word "purchase" is not here to be taken in the largest extent of it, but is confined to cases where a pecuniary consideration is paid. In the great case of *Roper* v. *Radcliffe* (*a*), the word "purchaser" was taken according to the meaning and intention of the act of 11 & 12 *W.* 3. *c.* 4.; and in the case of Lord *Derwentwater*, the person was considered not as a purchaser within the meaning of that same act. But here, a pauper's wife has an estate assigned over to her, out of love and affection, without any money consideration, by her own father, which cannot be such a purchase as this act intends. A devise is not within this act. (*b*) Indeed, if the husband had paid a consideration, he would have been a purchaser, though the conveyance had been made to his wife. In the case in 3 *Peere Williams*, 40. and other cases, it has been determined, "that a wife administratrix or executrix shall not, if she be a papist, take terms or "other interest in lands under the will; because a papist is "disabled by 11 & 12 *W.* 3. *c.* 4. from purchasing; and taking "under a will is purchasing." (*c*) But in the present case, the husband is not to be considered as a purchaser, but as being out of this act of 9 *G.* 1. and, therefore, he acquired a settlement in *K.*

A conveyance from a father to his daughter, in consideration of natural love and affection, of the residue of a term determinable upon lives, is not a *purchase* within 9 G. 1. c. 7., and, therefore, a residence thereon will gain a settlement, although the original consideration paid by the father was only 20*s.* Cald. 124.

But see Rex v. Warblington, *post*, pl. 634. Rex v. Ufton, *post*, pl. 637.

(*a*) 9 Mod. 167. 181. 10 Mod. 230. 2 Eq. Ab. 508. 771.

(*b*) Dougl. 738.

(*c*) See 3 Peere Wms. 46.

Consequently, the Sessions have determined wrong.—THE THREE OTHER JUDGES concurred with the C. J. in opinion, that this act of 9 *G.* 1. does not extend to devises, or gifts, or other methods of acquisition; but is confined to the particular case of purchases for money-considerations under 30*l.* For, on the contrary construction, WILMOT J. observed, no devise, or gift, or marriage settlement would gain a settlement, unless a pecuniary consideration was paid. He said, that this act was plainly intended only against gaining settlements by purchases for small money-considerations: and the word "purchaser" is not to be taken in its strict legal sense, but according to the intention of the legislature; which was regarded in the case of *Roper* v. *Radcliffe* (*a*), and ought to be so in this case; though that intention was very different in the two cases, for the act of parliament there in question intended the general sense of the word; this act, the confined one.

(*a*) 9 Mod. 167. 181.

A wife who, on being left by her husband, goes and resides on his estate for 40 days by herself, does not thereby gain a settlement for a husband, and, therefore, not for herself or children.

S. P. Rex v. St. Mary, Berkhampstead, 2 Sess. Cas. 82. See Rex v. Martley, *post*, pl. 645.

616. *Rex* v. *Aythrop Roodinġ*, *M. T.* 30 *G.* 2. *Burr. S. C.* 412. — *G.*, the pauper's husband, having been legally settled at *W. R.*, went away and left his wife and children. Whereupon she and her children went and lived for the space of 40 days, without her husband, in a copyhold tenement of her husband's own, at *A. R.* But legal notice "to depart" was given to her, within the 40 days, by *A. R.* — LORD MANSFIELD: This is the husband's own estate, and he himself, certainly, might have gone and gained a settlement there, by residing 40 days. It is stated, generally, "to be his "own:" it does not appear to have been a purchase within 9 *G.* 1. *c.* 7., nor does it at all appear how he came by it. Neither does it appear that the wife went to reside upon it against the husband's consent. The old settlement remains as it was: she is only irremovable from the property of her husband. And so it is, in the case of soldiers in the king's service. She cannot be removed from her husband's property, upon being only likely to become chargeable. — DENNISON J. *Gaining a settlement*, and *being irremovable* from a place for 40 days, are not convertible terms. The husband's settlement remains as it was; but, nevertheless, the wife is not removable from his estate; for she is not within the intent and meaning of the 13 & 14 *Car.* 2. *c.* 12., nor is it agreeable to the liberty of mankind, that a person should be removed from his own estate. This woman's going thither does not appear to have been against the consent of her husband: it is rather to be presumed that she went with his consent. Nor is *A. R.* obliged to maintain her, and, consequently, they are not hurt by her being there. If she will stay there, and cannot maintain herself, she must look to that. The *majus* and *minus* of the estate is out of the question; it makes no difference in the present case, be it greater or be it less in value. — FOSTER J. held that this woman had a natural right, or, at least, a matrimonial right to go to her husband's estate; and that as there does not appear to be any dissent of her husband, it should rather be presumed that he consented. The husband himself would not have been removable from his own, if he had gone thither. His right is under *Magna Charta*: "None shall be disseised of his freehold." This woman was not become chargeable to *A. R.* If she had become actually chargeable to that parish, I think, that by common law they must have maintained her. This is the common law, so far back as from the time of THE MIRROR.

617. *Rex* v. *Cold Ashton*, *H. T.* 31 *G.* 2. *Burr. S. C.* 444. — *H.* and *M.* his wife lived in the parish of *C. A.*, under a certificate from *W.*, from the month of *July* 1725, until about *Christmas* 1728; at which time *F.* the father of *M.* died intestate, leaving his said daughter and five other children. *F.* was, at the time of his death, possessed of and entitled to a tenement and two acres and a half of land, of the yearly value of 6*l.* 17*s.* situate in *C. A.*, for the remainder of a term of 99 years, determinable on the death of himself and his said daughter. Upon *F.*'s death, *H.* and his wife entered upon and took possession of the said tenement and land, and lived therein and occupied the same until they were removed therefrom by two justices, in the year 1758, to the parish of *W.*; but, on appeal, the Sessions held that they were settled in *C. A.* by having resided on their own estate; and they quashed the order of removal, and stated the above case. — LORD MANSFIELD: The question is, Whether *H.* acquired such a right as rendered him irremovable? Now here he had acquired a positive right by 20 years' possession; which is much more than a mere negative right, or a bar. This is such a positive right as would have sufficed to support an action. He might have brought an ejectment upon a 20 years' possession; and, therefore, it is distinguishable from the case of a bar, a mere negative right, or a limitation; for it does not merely bar the remedy, but gives the right, upon which he may recover in ejectment. And here is a presumption that they had agreed with the other children of *F.* for their shares: as to *M. H.*'s right to this settlement, as being next of kin to *F.*, the general question, whether it be sufficient for the next of kin to be in possession merely without taking out administration, is very different from the particular question in this case; for there is a great difference between a sole next of kin, and where several persons in equal degree have all of them, as in the present case, an equal right. — THE REST OF THE COURT concurred, and the order of Sessions establishing the settlement of the paupers in *C. A.* was affirmed.

A tenement and two acres and a half of land for the remainder of a term of 99 years, determinable on the death of the possessor and his daughter, will give a settlement to the husband of the daughter after a residence thereon for 20 years subsequent to the death of his father-in-law, although the father died intestate, left five other children, and no administration was taken out, or other evidence of the legal right by which he entered on the said estate.

See R. *v.* North Curry, *post*, pl. 631.

618. *Rex* v. *Shenston*, *M. T.* 32 *G.* 2. *Burr. S. C.* 468. — *I. G.*, the pauper, with *M.*, his first wife, who was the daughter of one *R. C.*, came with a certificate, in the year 1717, from *S.* to *A.*, and there lived with *R. C.* in his house till his death. *R. C.*, by his will, dated 23d *September* 1724, gave to his daughter, *M. G.*, then the pauper's wife, all that his house, barn, garden, croft, and shed, with the appurtenances in *A.*, to hold to her for her life; and from and after her decease, to *Robert G.*, son of the said *Mary G.*, the said *Robert G.* paying *Mary*, his sister, 5*l.* The testator died soon after making his will. The pauper and his wife *Mary* (the devisee for life under the will) entered upon the premises so devised, and enjoyed the same, (the said house being then new-built, and the premises altogether worth 40*s.* a year), from the death of *R. C.*, until the death of *Mary*, his first wife, which happened six months after the death of her father; and continued in the possession of the premises, till removed by the present order, without paying rent to any person. The pauper's first wife left issue by him, one son, named *Robert*, (the remainder-man in the will); who, many years before, went for a soldier; and whether he was living or dead, was not known; and one daughter, named *Mary*, now living. The pauper, after the death

If an estate be *devised* to the wife of a certificate-man for her life, and they enter into and reside upon the same, they thereby gain a settlement.

of his first wife, married *Mary*, his present wife. It was contended, "That *I. G.*, the pauper, had a right to this estate, when he entered upon it; and had continued a peaceable and uninterrupted "possession of it for above 30 years, and was irremoveable from "it, notwithstanding his coming originally into the parish under "a certificate." And the cases of *Ashbrittle* v. *Wyley* (*a*), *Burclear* v. *Eastwoodhay* (*b*), *Rex* v. *Marwood* (*c*), *Rex* v. *Duns Tew* (*d*), *Rex* v. *Cold Ashton* (*e*), were mentioned. And Mr. MORTON, who was to have shown cause against quashing these orders, candidly owned that he could not undertake to support them against several express resolutions. — LORD MANSFIELD. So it seemed to us upon the original motion. Whereupon the rule was made absolute.

(*a*) *Ante*, pl. 610.
(*b*) *Post*, pl. 681.
(*c*) *Ante*, pl. 615.
(*d*) *Ante*, pl. 168.
(*e*) *Ante*, pl. 617.

The family of a man who has an estate *from year to year* cannot be removed therefrom while his interest continues, although he has gained a subsequent settlement in a different parish.

619. *Rex* v. *Leeds*, *E. T.* 4 *G.* 3. *Burr. S. C.* 524. — *J. H.* took a tenement of 10*l.* a year at *B.*, and was to leave it at *Michaelmas* or *Lady-day*; but no mention was made at what *Michaelmas* or *Lady-day*. At *Michaelmas* 1761, he and his wife went to *B.*, and resided upon the tenement till about the *Christmas* following; from which time, till the month of *May* 1762, he was sometimes at *L.*, and sometimes at *B.*; but his wife and family resided wholly at *B.*, and never were at *L.* before the removal. In *May* 1762, he took, for a year, one tenement at the annual rent of 15*l.* and another of 5*l.*, both at *L*; where he followed the trade of a coachmaker, and occupied them till some time in the month of *June* 1763. From the time of his taking the tenement at *L.* to *November* 1762, he resided chiefly at *L.*, but was in the mean time twice with his wife at *B.*; whom he left in the tenement he took there. From *November* 1762, he resided constantly at *L.*, till about the 15th of *April* 1763. His wife and family becoming chargeable to the town of *B.*, the parish-officers of *B.* obtained a warrant from a justice of peace to apprehend him on that account; when he made them satisfaction, and promised to take his wife away from *B.*, and prevent there being any further expence. But she being at her time, he and his wife staid in the tenement at *B.* 27 days, whilst she lay in, to wit, from the 18th day of *April* 1763, to the 15th of *May* following; when he took his wife to and left her at her brother's in *W.*, and returned to *B.*, locked up the doors of his house there, left the key with a neighbour, and gave him directions to get the hay for him off the tenement there. In a few days, and without ever having resided either in the tenement at *B.*, or in the parish of *B.*, after the taking his wife to her brother's, he went to *H.*, a hamlet in the parish of *L.*, which maintains its own poor, and continued there ever after. The hay was accordingly got for him, and at the time of the removal remained upon the premises, and was his property. About a fortnight before the removal, he wrote a letter to the person with whom he left the key, to deliver the possession of the tenement at *B.* to the landlord; but possession was not delivered. On the day before the appeal he received the key from the said person, and had it in his possession at the time of the appeal. His wife having afterwards returned to *B.*, and wanting relief, they removed her to *L.*, as the place of her settlement. — The Sessions was of opinion that *L.* was the place of her and her childrens' settlement; as *J. H.* had not resided 40 days upon his tenement at *B.* since he resided upon his tenement at *L.*; which he did from *November* 1762 to the 15th of *April* 1763, as above stated; and, there-

fore, they confirmed the warrant of the two justices. — THE COURT were unanimously of opinion, that *J. H.* himself could not have been removed from his own tenement at *B.*, the *lease* whereof was unexpired; and if they could not have removed the man himself from his own, it follows, consequently, that they could not remove his wife and children so long as it remained his. Indeed, if his lease at *B.* had been at an end, his last 40 days' residence at *L.* might have borne a different consideration; but the justices have certainly been premature in removing them from *B.* whilst his interest there subsisted, and from whence he himself would at that time have been irremovable. — Both orders quashed.

The remainder of a term of years devised to four executors, is a sufficient estate to give any of them who reside thereon for 40 days a settlement in the parish, although under 10*l.* a year.

620. *Rex* v. *Uttoxeter*, *T. T.* 5 *G.* 3. *Burr. S. C.* 538. — *W. G.* was legally settled in *U.* His mother rented and resided upon a farm of 22*l.* *per annum* in *M.*; which she devised to her five children, and made the pauper and her three other sons executors of her will; and died. The pauper alone proved the will; and entered as her executor, and managed and resided upon it for 12 or 13 weeks. He afterwards returned to *U.*; but continued to go over to *M.*, to give directions, from time to time; and had a servant upon the farm till the *Lady-day* following. The pauper possessed all the testatrix's personal estate, and paid the arrears of rent due in his mother's lifetime, and the year's rent ending at *Lady-day* 1758, to the landlord's agent; who gave him a receipt for 44*l.* in full for all arrears of rent, and the rent to become due to *Lady-day* next: and the said agent offered to let the pauper continue to hold the farm after *Lady-day* 1758, if he would not insist on repairs; which terms the pauper did not choose to accept. — WILMOT J. It is very true, that a share not amounting to 10*l.* a year, of a tenement of above 10*l.* a year in value will not do. But here he has a right as executor. The value thereof is totally immaterial; because, by common law, no person can be removed from his own; and one who has a right to reside, irremovably, does thereby gain a settlement if he reside 40 days. — YATES J. If poor persons voluntarily come into parishes to settle in tenements under the value of 10*l.* a year, the act of 13 & 14 *Car.* 2. *c.* 12. prevents their gaining a settlement by their intruding into parishes, as strollers and vagabonds, and with the bad intentions mentioned in the preamble of that statute: but if an interest in a tenement, of ever so little value, devolve upon a person by *act of law*, it is a quite different case, and by no means within the provisions or purview or the intent of that statute. — ASTON J. expressed himself to the like effect: and, moreover, he cited the case of *Rex* v. *Sundrish* (*a*), where it was fully and solemnly settled, that any person who has an interest by act of law, may dwell upon it as his own, and is irremovable; and if he remain 40 days, gains a settlement; for he cannot be taken to come into the parish upon the ill views which are provided against by the act of 13 & 14 *Car.* 2. *c.* 12., and is, therefore, not within the purview of that statute.

(a) *Ante*, pl. 611.

A voluntary grant for life of a customary cottage to a daughter, is a sufficient estate,

621. *Rex* v. *Ingleton*, *E. T.* 6 *G.* 3. *Burr. S. C.* 560. — *R. S.*, and *Rose*, his wife, being legally settled in *I.*, about 43 years ago, came to inhabit in *A.*, where they resided ever after; and brought with them a proper certificate from *I.*, acknowledging them to be legally settled there; which they delivered to the proper officer

though only of 4*l.* a year value. See R. *v.* Warblington, *post*, pl. 687.

at *A*. About 32 years ago, a customary cottage situate in *A.* was, in consideration of natural love and affection, conveyed by the father of *Rose S.* to her use for life; and after her decease, to the use of *Jane*, her daughter, and her heirs. *Richard S.*, and *Rose* his wife, entered on the cottage, and continued in possession 16 years without interruption; and then *Richard* purchased of his daughter *Jane* her remainder in fee in the premises for 5*l.*; and was admitted tenant thereof; and continued possession of the same eight or nine years longer; when they sold the same to *F. H.* for 21*l.* About 10 years ago, *J. W.*, aunt to *Rose S.*, in consideration of natural love and affection, conveyed a moiety of another customary messuage and tenement with some lands thereto belonging, situate in *A.* aforesaid, of the yearly value of 4*l.*, to the said *Richard S.* and *Rose* during their lives; and, after their death, to *Thomas* their son, his heirs and assigns for ever; and the other moiety unto their said daughter *Jane*, and her heirs. *Richard S.*, and *Rose* his wife, entered into possession of, and resided in the said tenement ever after, and continued so to do at the time of their being removed. But on the 21st of *January* last past, in consideration of 10*l.*, they conveyed their moiety of the said last-mentioned tenement to *Thomas S.* their son, who lived with them in the same house: and after the making such conveyance to the said *Thomas* the son, and before the making the order of removal, the said *Richard S.* and *Rose* his wife became actually chargeable to the said township of *A.* — The counsel, on the authority of *Rex* v. *Marwood* (*a*), gave up the point; and allowed that that was a voluntary settlement, and not a purchase within the statute of the 9 *G.* 1. *c.* 7. § 5.; in which opinion THE COURT concurred.

(*a*) *Ante*, pl. 615.

If a woman purchase an estate under 30*l.*, and marry, the estate is sufficient to gain an original settlement to the husband, and a derivative settlement to the wife, although insufficient to have given her one in her own right.

622. *Rex* v. *Ilmington*, *T. T.* 6 *G.* 2. *Burr. S. C.* 566. — *Theophilus E.*, being legally settled in *I.*, about 33 years ago married *Elizabeth E.* his wife, then *E. S.* spinster; who had before, by indenture bearing date the 25th day of *March* 1724, purchased a leasehold tenement, situate in the parish of *M.*, for the sum of 6*l.*, for the remainder of a term of 1000 years. *Elizabeth* resided in the tenement for about nine years before her intermarrying with *Theophilus E.* After such intermarriage, *Theophilus E.*, together with *Elizabeth* his wife, the pauper, resided in the tenement about 16 years; when *Theophilus E.* died, leaving *Elizabeth* surviving him. *Elizabeth E.*, after her husband's death, continued to reside in the tenement till about *Christmas* last (1765), when she sold and conveyed the tenement to *James S.*, for the sum of 6*l.*; and was afterwards removed from the parish of *M.* to the parish of *I.* — THE COURT, on the authority of *Rex* v. *Marwood*, (*b*) were unanimously of opinion, that this was a settlement to the husband by the intermarriage; for, upon the marriage, *her* estate vested in *him* by law, and there is a distinction between an *actual purchase* and a *legal purchase*; and that his widow derived her settlement thereby through him; although upon the statute 9 *G.* 1. *c.* 7. she gained no settlement by her purchase when originally made.

(*b*) *Ante*, pl. 615.

A cottage built on the waste, after a possession of more than 20 years,

623. *Rex* v. *Garway*, *M. T.* 8 *G.* 3. *Burr. S. C.* 632. — *P.*, about 35 or 36 years ago, went and lived with his father in a cottage built upon the waste, in the parish of *A.*, where his father had then lived about 30 years. As long as the pauper remembered,

which was about 70 years, a house stood upon the same spot, and the land belonging to it was inclosed. Soon after the pauper went to live with his father, his father died; and the pauper continued in possession of the premises (being his father's eldest son) till the time of his removal to the parish of *G.*, the pauper having paid an acknowledgment of 2*s.* 6*d.* to the lord of the manor for the last 30 years; but, to his knowledge, his father never paid any acknowledgment. The premises were of the yearly value of 50*s.* or thereabouts. The Sessions confirmed the order of removing the pauper from *A* to *G.*, but on a rule being granted, both these orders were quashed without defence.

although that possession was not adverse, is such an estate as will enable its possessor to gain a settlement.

624. *Rex* v. *Bitton*, *M. T.* 9 *G.* 3. *Burr. S. C.* 631. — *B.* built a cottage at his own expence, on the waste in the hamlet of *O.*, and lived therein for 19 years and a half without interruption, but never paid any taxes, nor was he rated for the cottage, or took any lease of the ground on which the cottage was built from the lady of the manor, or had any leave or licence to erect the cottage. About 20 years ago, he was turned out of possession by an ejectment brought by a person claiming the same under a mortgage thereof made by *B.* for the sum of 15*l.*, and some time after that (which was more than 20 years ago) he and the mortgagee sold the cottage to one *W.* for 28*l.* and *B.* had 5*l.* part of the purchase money. — THE COURT were all of opinion, that it appeared to be a possession of more than 20 years. He was himself in possession 19 years and a half, and the mortgagee's possession must be also considered as his possession. Upon the whole his possession was upwards of 20 years.

The owner of a cottage on a waste, who continues in possession for 20 years, thereby gains a settlement, although he originally obtain such cottage by fraud.

625. *Rex* v. *Brungwyn*, *H. T.* 13 *G.* 3. EDITOR'*s MSS.* — The case stated, that *H.*, the pauper, was hired for a year in the parish of *B.*, and served it pursuant to such hiring, and received his wages: that about 1755 he married *D.*, who was then, and had been three years before, in possession of a house and garden in the parish of *G.*, which had been given her by deed by one *W.* the owner of the premises for upwards of 30 years before: that the said *H.* and his wife lived in the house and premises for 17 years after their marriage, and never paid any rent, nor were interrupted in the enjoyment thereof by the lord of the manor, nor any other person whatsoever: that about *Lady-day* last, and some time before, *H.* applied to the officers of *G.* for relief, who refused to relieve the paupers on account of their being owners of the said house and premises, which the parishioners of *G.* pretended were built on the lord's waste, and insisted on their selling the premises, and that they should be removed to *B.*: that about *Lady-day* last, the pauper and his wife sold the house to the parish-officers of *G.* for 7*l.* 7*s.*, and were then removed from the parish of *G.* to *B*; and on appeal from the order of removal, it was confirmed.—BALDWIN, who had been applied to by the parish of *G.*, said, that the justice at the Sessions seemed to be of opinion that the word "purchase" under the statute of 9 *G.* 1. *c.* 7. meant *purchase* in contradistinction to *a descent*; but upon looking into the cases, he thought it meant and was confined to cases where the consideration was paid in money, and that he could not, therefore, support the order. — And it was accordingly quashed.

If a man marry a woman who is possessed of a cottage, conveyed to her by a person who had been in possession for 30 years, he shall gain a settlement by 40 days' residence on such estate.

626. *Rex* v. *Stockley Pomroy*, *H. T.* 14 *G.* 3. *Burr. S. C.* 762. — *E.*, being possessed of an estate in *C.* for a term of years de-

If a pauper's grandmother

leave him an annuity of 10*l.*, payable out of an *estate*, consisting of personal property to the amount of 32*l.*, and an estate for years determinable on his mother's death, his residence on such estate will not give him a settlement.

terminable on the death of *S. W.*, the mother of *J. W.*, the pauper, in and by her last will devised to her grandson, *J. W.*, the pauper, the sum of 10*l.* a year, to be paid by her executors in trust therein named, out of her estate, during the said *J. W.*'s mother's life; and if her grandson, *J. W.*, should happen to die before his mother, *S. W.*, that then his brother and sister, *W.* and *M.*, should have and enjoy the aforesaid 10*l.* a year, of like lawful money, to be paid by her executors in trust therein named, yearly and every year during the life of her daughter, *S. W.*, aforesaid; and if in case *W. W.* and *M. W.*, her grandchildren aforesaid, should either of them happen to die before their mother, *S. W.*, that then her will and pleasure was, that the survivor of them should have and enjoy the aforesaid legacy of 10*l.* a year in manner and form aforesaid payable: the testatrix soon afterwards died, without altering or revoking her will, and left, at the time of her decease, the leasehold estate above-mentioned; and effects to the amount of 32*l.* only, and no more: the pauper, *J. W.*, being settled in *S.* and considerably in debt, in order to avoid his creditors, went to reside in *C.*, and there resided with his mother on the leasehold estate, and did carry on the business of a jobber in cattle, during the continuance of the annuity, and while the same was due and payable, for the space of 40 days and upwards, between *Midsummer* 1770, and *Midsummer* 1771; it did not appear, that the annuity was rated to any of the public levies. — LORD MANSFIELD said, that there was no colour for adjudging the pauper to have gained a settlement in *C.* He did not go thither to reside upon his own; he absconded there to avoid his creditors. This was no specific legacy; it is payable out of her whole personal estate. But if it were a specific legacy, has a specific legatee any right to go and live upon the estate? If it had been a rent-charge out of a freehold, it would not give a right to live upon such freehold. But this man had only a pecuniary demand. There was no colour for his going to live upon this leasehold estate as his own. — THE OTHER THREE JUDGES concurred.

The widow of a man who dies seised of a house, gains a settlement by a residence of 40 days, in *right* of her dower, but she cannot, by such an estate, communicate a settlement to a second husband, until dower be assigned.

See Rex *v.* Long Wittenham, *post*, pl. 686.

627. *Rex* v. *Painswick*, *E. T.* 14 *G.* 3. *Burr. S. C.* 783. — *James A.*, the first husband of the pauper, *Jane S.*, died about 16 years ago, seized of a house and orchard in *S.*, leaving *Jane* his widow, and *John A.*, his son and heir by a former wife, who was then, and now is a soldier in the guards. *Jane*, upon *John A.*'s death, put the house in repair, and entered upon the same house and orchard, not hearing that any one had a better right than herself: nor did she know whether *John A.* was dead or living. *Jane* lived in the house for about seven years after *James A.*'s death, and then intermarried with *S.*, who was settled in *P. S.* resided with his wife in the house till his death, which happened about two years afterwards, and left by her the two other paupers, his children. Afterwards, after his decease, *Jane* lived in the house till about three quarters of a year ago. She paid 1*s.* quit-rent. *John A.*, the son, claimed the premises about four years after his father's death, and again about seven years ago; and, on *Saturday* before the Sessions sold his interest therein, the house having fallen down, for 40*l.*, sixpence whereof was paid in earnest. — THE COURT were of opinion, that this mere right of dower was not sufficient to gain a settlement in *S.* for her second

husband, and the children she had by him; but that as by *Magna Charta* she was entitled to remain 40 days, and to have estovers, she might by residence for that time have a claim to a settlement in *S.* for herself.

A cottage devised to a son, with directions that his father and sister should have free liberty to dwell therein during their lives, is a sufficient estate.

628. *Rex* v. *Woburn*, *T. T.* 14 *G.* 3. *Burr. S. C.* 785. — *L.*, entitled to a long term of years in a cottage in *E.*, in 1748, devised as follows: "I give and bequeath to my kinsman, *W. P.*'s son, "named *A. P.*, and his heirs, all and whatsoever I shall die "possessed of, he paying certain legacies herein mentioned. "Also it is my will and pleasure, that my kinsman, *W. P.* the "elder, his wife and children, shall have free liberty and power, "during their natural lives, to dwell in the same house they now "live in" (which was the cottage above mentioned). The testator appointed *A. P.* his sole executor. *L.* died in 1750, and *A. P.* proved his will in the same year. *W. P* and his wife, and their son *A. P.*, and their two daughters, the paupers, from the year 1750 to *February* last, the time of his death, resided in the cottage. About 14 years ago, *W. P.* was put in possession of a barn and four poles of ground in *E.*, by warrant from the sheriff, executed by *H.*, who received a guinea for his trouble. *W. P.*, after possession so delivered to him, let the premises at the rent of 5*s. per annum*, and received the rent, and cut down a tree that stood upon the ground, and sold it. The Sessions were of opinion, that the paupers had not gained a settlement in *E.*, and they confirmed the order of two justices removing the pauper from *E.* to *W.* — But PEMBERTON moved to quash these orders, inasmuch as this devise, which gave the paupers "free liberty and power during their natural lives to dwell in the "house," was a discharge of the certificate, and contended that they had gained a settlement in *E.*; and THE COURT were clear that the objection was unanswerable, and that it was impossible to support the orders: and both orders were accordingly quashed.

If a man who is insolvent has conveyed his estate to trustees, for the payment of his debts, and afterwards, before the trust is performed, get fraudulently into possession, a residence of 40 days will not gain a settlement.

Cald. 110. See Rex *v.* Catherington, *post*, pl. 638. R. *v.* Eddington, *post*, pl. 643. R. *v.* Tarrant, Launceston, *post*, pl. 632.

629. *Rex* v. *St. Michael's, Bath*, *E. T.* 21 *G.* 3. *Doug.* 629. — *Freeman*, being entitled to two freehold houses in *W.*, one of the value of 28*l.* a year, the other of 26*l.* a year, in 1778, conveyed them, by lease and release, to trustees, in trust, to be sold, and the money arising from the sale to be paid, first in discharge of two mortgages due thereon, amounting to 500*l.*, afterwards to his other creditors rateably, and the surplus, if any, to him, his executors, administrators, and assigns: the houses were both let to other persons at the time of the conveyance, and the pauper then resided in a public-house in the parish of *St. M.*, at the rent of 40*l. per annum*, which he had occupied several years till he failed: afterwards, one of the houses becoming void, the trustees, having the possession and the key thereof, employed one *Farrant*, then a lodger in the pauper's house, to clean the vacant house, and paid her 3*s.* for so doing, and delivered her the key for that purpose; which having done, she placed the key in the bar of the public-house, among some other things of her own which she kept there, intending afterwards to re-deliver it to the trustees; but the pauper's wife took it from thence, and took possession of the vacant house, and, with her husband, continued there ever since to the time of the removal, being in the whole one year and three quarters: one of the trustees, seeing her carrying her goods

thither, gave her notice that she was doing wrong, not having the consent of either the trustees or creditors; to which she replied, "I am going to my own estate, for I and the children cannot lie "in the street:" the premises had not yet been sold by the trustees: the value thereof was about 650*l.* at present, but at the time of the conveyance was something more: the debts owing by the pauper, for which such trust deed was executed, including the two mortgages, were 881*l.* and upwards; it did not appear, on that deed, how the annual rents were to be disposed of, till the sale should be made. — LORD MANSFIELD: If the estate on which a pauper resides is substantially his property, that is sufficient, whatever forms of conveyance there may be; and, therefore, a mortgagor in possession gains a settlement, because the mortgagee, notwithstanding the form, has but a chattel, and the mortgage is only a security. It is an affront to common sense to say the mortgagor is not the real owner. But here, what interest had the pauper in this estate? He made an immediate conveyance to trustees, not a mortgage, to sell and pay off two mortgages and other debts; and when this conveyance was made, it was doubtful whether there would be any surplus: the deed says that he shall have the surplus, *if any:* He had only a chance of a residue, and had not a right to continue a moment in possession. A mortgagor has a right to the possession till the mortgagee brings an ejectment. After the mortgagee has got into possession he might gain a settlement. There is still another and a stronger ground, in this case, for the possession was gained by fraud. — WILLES and ASHHURST Js. of the same opinion. — BULLER J. I am of the same opinion. To make this resemble the case of a mortgagor, an instance must be shown in which the mortgagee had been in possession, and has lost it again by fraud.

A *devise* is not a *purchase* within 9 G. 1. c. 7.; and, therefore, if an estate be devised to trustees, to be sold to pay debts, and to divide the surplus, if any, between A, B, and C; A has an *equitable* interest in the estate; and by residing upon it 40 days gains a settlement.

630. *Rex* v. *Wivelingham*, *T. T.* 21 *G.* 3. *Dougl.* 767. — *E. B.* devised a copyhold messuage, a freehold dove-house, and a piece of land in the parish of *A.*, in the manor of *H.*, to trustees to be sold, and the money arising therefrom to be equally divided between *R. B.*, and the three daughters of *W. B.* deceased, share and share alike. *R. B.*, on the death of the testatrix, took possession of the copyhold messuage. The devisee, with the consent and approbation of the trustees, agreed that the three daughters should take the ready money of the testatrix, which amounted to about 60*l.* after payment of her debts, and that *R. B.* should take the dove-house and piece of land for his share. The three daughters accordingly took the ready money; and the trustees conveyed by bargain and sale the freehold piece of ground and the dove-house erected thereon, to *R. B.* in fee; and the three daughters, for the further performance of the said agreement, and for quieting *R. B.* not only in the said freehold piece of ground, dove-house, and premises, but also of the copyhold messuage, and for extinguishing any claim they might have therein as heiresses at law of *E. B.* or otherwise howsoever, remitted, released, &c. to him all manner of right, &c. in, to, or out of the said freehold premises; and also of, in, to, or out of the said copyhold premises; and thereby severally promised to do any further act or deed for continuing the said copyhold messuage and premises to the said *R. B.* No farther conveyance of the copyhold premises was made by the other parties in the said indentures named,

to *R. B.*; but, at a court holden for the manor of *H.*, on the 17th of *April* 1770, *R. B.* was admitted in fee to the said messuage, with the appurtenants, as cousin and heir-at-law of *E. B.* He resided therein, and continued in the uninterrupted possession and quiet enjoyment of the said freehold and copyhold estates to the time of his death, being about 11 or 12 years, and was, during that time, assessed, and paid to the land-tax; but the premises were not, at any time, of the value of 30*l.*, and they are, at this time, agreed to be sold for 15*l.* The question was, Whether the residence of *R. B.*, the pauper's husband, at *A.*, was such a residence upon his own property, as would discharge the certificate, and gain a settlement. — LORD MANSFIELD mentioned the case of *Roper* v. *Radclyffe* (*a*) to show, that a devisee of the surplus arising from the sale of lands after payment of debts and legacies, has an equitable interest in the lands themselves, it being in his option to pay the debts and legacies and keep the land.—WILLES J. said, The same question, as in this case, had occurred in *Rex* v. *Natland*, which was referred to *Gould* J. when upon the circuit; who decided that a settlement was gained; and that his opinion had been afterwards recognized by the Court.

(*a*) 9 Mod. 167. 181.

631. *Rex* v. *North Curry*, *M. T.* 22 *G.* 3. *Cald.* 137. — *W.*, late husband of the pauper, *B. W.* and father of her four children, being settled in the parish of *R.*, intermarried with the said *B.*, his now widow; and soon afterwards purchased a cottage and garden in *N. C.*, of the yearly value of 20*s.* of *J. C.* for 14*l.* 14*s.*; who, by lease, dated the 8th of *March* 1775, demised the same to the said *W.*, his executors, administrators, and assigns, for the term of 99 years, if the said *W.*, and *E.* his wife, and *J.* his brother, or any or either of them, should so long live, under the yearly rent of 2*s.*: *W.* soon afterwards entered into possession of the cottage and garden, which was never rated to the land-tax or to any parochial taxes; and he and his wife resided therein from thence till about the 26th of *May* 1780; when he died intestate, leaving the said *B.*, his widow, and their four children; who soon afterwards became chargeable to the parish of *N. C.*; but the overseers refused to relieve her, unless she would go into the workhouse; whereupon she and her children, about the middle of *January* 1781, quitted the possession of the cottage and garden, and went into the workhouse of the parish of *N. C.*, and were there relieved and maintained by that parish till the 24th of *February* 1781, when they were removed from *N. C.* to *R.* *R.* entered an appeal therefrom. *B. W.* soon afterwards returned to the said tenement, and resided there till the 28th of *April* 1781; when the said cottage and garden were purchased of her by *T. H.* of *N. C.* aforesaid, for the residue of the said term of 99 years, for the sum of 6*l.* 6*s.* and no more; and by indenture, dated the 28th of *April* 1781, she assigned the same to him accordingly. On the 11th day of *July* 1781, being the day after the first day of the present Sessions, *B. W.* sued out letters of administration of the goods, chattels, and effects of the said *J. W.*, her late deceased husband. — LORD MANSFIELD: In these cases we should avoid a nicety of distinction. This is not materially different from the case of *Widworthy*. (*b*) As the children were entitled to two thirds, the widow is not properly, and in the sense of the cases,

Without administration, a person solely entitled, but in whom the whole interest does not vest for his own use, cannot by residence acquire a settlement.

(*b*) *Ante*, pl. 612.

the sole next of kin. — WILLES J. The widow was left in necessitous circumstances, and a fit object for removal to the poorhouse. There is no pretence for imputing improper motives in sending her there. The children had an interest, though they could not have administration. — ASHHURST J. I adhere to the authority of the case of *Widworthy*, which is not shaken; for at most more has not at any time been said by the Court, even in the case of one solely entitled in every sense, than that such case would deserve consideration. — BULLER J. concurred: and the order of Sessions, vacating the order by which the paupers were removed from *N. C.* to *R.*, was quashed. (*a*)

A surrender of an old lease, which had been many years in the family, and the taking of a new one, is not *a purchase* within the 9G. 1. c. 7., and will not prevent a settlement being acquired by residence.

632. *Rex* v. *Tarrant, Launceston, T. T.* 22 *G.* 3. *Cald.* 209. — The case stated that *J. Hatcher*, father of *T. Hatcher*, the pauper, was born in the parish of *M.*; from whence he was bound an apprentice to one *T. C.*, of the parish of *S.*, and served his apprenticeship with his master in the parish of *S.*; that afterwards, in the year 1742, the said *J. Hatcher* intermarried with one *M. Ham*, of the parish of *M.*, daughter of *E. Ham* of the said parish; that *E. Ham*, at the time of the marriage of her daughter with *J. Hatcher*, was possessed of a certain ancient cottage or dwelling-house in the parish of *M.*, called *M. P.*, with the out-houses, garden, and appurtenances, for a term of 99 years determinable on three lives: that, immediately upon the marriage, *E. Ham* gave her daughter, and *J. Hatcher*, an abiding in the said cottage; shortly after which, *E. Ham* built a tenement adjoining thereto, and resided partly in the one, and partly in the other of the said tenements, till the time of her death, in the year 1750: the said *J. Hatcher* and *M.* his wife occupied the said original cottage during the whole of the time; but there was no gift or conveyance of the same made by the said *E.* to *J. Hatcher:* that the said *E. Ham* had, besides her daughter, one son, called *W. Ham:* that, previous to her death, she said she meant to give a house to each of her children, and if either of them chose, on her death, to buy the other part, he would then have the whole: the said *E. Ham* died intestate, and no letters of administration of her goods and chattels were taken out: that, upon the death of the said *E. Ham*, *J. Hatcher* and *M.* his wife continued in the occupation of the original cottage; and the said *W. Ham* took possession of the new tenement; that, in the year 1755, *J. Hatcher* purchased the new-built tenement of his brother-in-law, the said

(*a*) Rex *v.* Chew Magna, M. T. 24 G. 3. Cald. 365. — *John Carver* married *Anne Hippesley:* whose mother was entitled to a leasehold estate, consisting of three acres and a half of ground in *Chew Magna* for a term of years determinable with one life: the mother died intestate; leaving the pauper's wife, a son, and another daughter: no letters of administration were granted of the mother's estate; the premises during the mother's life were rented by *Jane Harvey* at a rack-rent of 4*l.* 10*s.* a year; and after her death continued so to be: after the mother's death the pauper received a third part of the rent from the tenant: soon after the mother's death a poor rate was made, in which the premises were rated in the following words: "Occupier of late Mrs. "*Hippesley*'s, 3*s.* 2½*d.*;" and the *overseer applying* to the pauper, he *paid* such rate twice: at this time the pauper resided in *Chew Magna*, *Harvey* continuing in the occupation of the premises; and it was admitted that since the case of Rex *v.* North Curry (*ante*, pl. 631.), the pauper, *John Carver*, who was not sole next of kin, could not without administration acquire a settlement by estate.

W. Ham, for the sum of 4*l.* 4*s.*; and on the 5th day of *February* in the same year, surrendered the old lease of the cottage called *M. P.*, with the out-houses, garden, and appurtenances, to *M. Hussey*, the lady of the manor; who, in consideration thereof, and also in consideration of the sum of 1*l.* 10*s.* granted unto the said *J. Hatcher*, his executors, administrators, and assigns, all the said ancient cottage or dwelling-house, with the garden and appurtenances thereto belonging, called *M. P.*, and a small piece of ground taken out of the waste adjoining, and for 10 years past inclosed as a garden, for the term of 99 years, determinable on three lives, at the rent of 2*s.* 6*d. per annum:* that by the said renewed lease it was declared, that the said executors or administrators of the said *J. Hatcher*, should hold the said premises after the death of the said *J. Hatcher*, in trust for said *M.* his wife, if she survived him, during the then remainder of the said lease; and after both their deaths for the benefit of their son *J.*, in case he should survive his said father and mother: that the said *J. Hatcher*, the pauper's father, continued in possession of the said original cottage from the time of the death of the said *E. Ham* in 1750, and from the time of the renewal of the said lease to the time of his death, which happened in 1767; after which the said *M. Hatcher*, his widow, continued in the possession of the said premises till the year 1771; when she conveyed the same to her son *J. Hatcher:* that the said pauper, *T. Hatcher*, continued to live with his mother as part of her family for near a twelvemonth after the death of the said *J. Hatcher* his father.—LORD MANSFIELD: This was not a purchase within the meaning of the statute 9 *G.* 1. *c.* 7., but only a surrender of the old lease and getting a new one, paying the fine. —WILLES J. After such a length of possession, the case of *Rex* v. *Cold Ashton* (*a*) is in point.—ASHHURST and BULLER Js. concurred.

(*a*) *Ante*, pl. 617.

633. *Rex* v. *Charlton*, *E. T.* 24 *G.* 3. EDITOR's *MSS.*—The pauper, *D.*, being settled at *A.*, married *M.*, the daughter of *R. P.*, who, being seised in fee *inter alia* of the plot of ground after-mentioned, did, after such marriage, by an indenture of feoffment made in 1767, between the said *R. P.* of the first part, and the pauper and the wife of the other part, in consideration of the marriage then lately had, and for the regard and natural affection to the pauper and his wife, and in consideration of 10*s.* paid by the pauper, the receipt of which he thereby acknowledged, and for divers other good causes and valuable considerations, give, grant, alien, enfeoff, and confirm unto the pauper, his heirs and assigns, all that plot of ground or garden containing 20 yards square, or thereabouts, situate at *C.*, on which, or some other part thereof, the pauper then intended to build a house, together, &c. to hold to the pauper and *M.*, their heirs and assigns, to the only proper use and behoof of the pauper and *M.* his wife, their heirs and assigns for ever. On this deed livery of seisin is indorsed. It farther appeared in evidence, that although 10*s.* is mentioned in the deed, neither that nor any other sum was paid or agreed to be paid by the pauper to *R. P.*; but, on the contrary, *R. P.* offered to give the plot of ground to the pauper to build him a house for him and his wife to live in, and, being a carpenter, promised to do all the carpenter's work, and find the timber *gratis*, and did so accordingly: and the pauper, being a bricklayer and

A conveyance after marriage by the wife's father to the husband only of an estate under the value of 30*l.*, it appearing to be grounded on natural affection, and intended for the use of both husband and wife, is not a *purchase* within the 9 G. 1. c. 7. § 5. S. C. Cald. 416.

plasterer, did that work. That the pauper entered on the messuage and land, and lived on and enjoyed the same for 10 years and upwards. About four years ago the pauper and his wife joined and levied a fine, and mortgaged the premises for 30*l.*, and two years since sold the same for 42*l.* to one *B.*, who is now seised in fee. The plot of ground before the conveyance to the pauper, and the building of the house, was not worth more than 1*l.* 1*s.*, and there was no promise or agreement before the marriage to convey it. The Sessions held the settlement to be at *C.* — WILSON showed cause. He said, that the statute 9 *G.* 1. *c.* 7. *s.* 5. extended only to purchases for a money consideration. It had been so determined repeatedly, and the words of the statute were clearly so, for the only purchases spoken of are those for which something was to be paid. Wherever there was a substantial and *bonâ fide* reason for the conveyance, as marriage was in this case, it was sufficient, the object of the act being only to prevent small fraudulent purchases. In support of this doctrine he cited *Rex* v. *Marwood* (*a*), *Rex* v. *Ingleton* (*b*), and *Rex* v. *Brynyn.* (*c*) As to *Rex* v. *Sawbridgeworth* (*d*), he said, it was prior to the other cases, and appeared to have gone on some appearance of fraud in the surrender. An argument had been raised at Sessions from the form of this deed, which in the *premises* gave an estate to the husband only, and it was contended that the wife could not take any thing by being named in the *habendum*. But in the limitation in the use which followed, both husband and wife were named, which, since the statute of uses, was sufficient to give them both an estate at law, and would have been sufficient in equity before. In the case of *frank-marriage*, the wife took a joint estate-tail, though not named till after the *habendum*. Therefore, in this case, the husband took a moiety in right of his wife. But, in truth, it was immaterial whether the husband or wife took the estate under the conveyance, provided it was not for a money consideration. — BEARCROFT, *contrà*, said, that all the cases hitherto determined had been where the estate passed to the wife by conveyance, and to the husband by operation of law. In this case the husband takes nothing by operation of law; he takes by the grant; and it has not yet been decided that such a purchase, although not for a money-consideration, is not within the statute. It is clear, that the wife takes no estate in any part by this deed. The premises are to the husband and his heirs; and it is settled in *Baldwin's* case (*e*), that the *habendum* cannot lessen an estate expressly given by the premises. It has been said, that by the subsequent limitation of the use, a moiety passed to the wife: so it would if the use had been well limited; as, "*habendum* to the husband and "his heirs, and to the use of the husband and wife, and their "heirs." But there must be some person to be seised to the use for an instant. The persons to stand seised, and those to whom the use is given, cannot be the same as they would be here if that construction were to prevail. — WILLES J. The question is, Whether either the husband or wife took such an estate by purchase as will be within the statute 9 *G.* 1. *c.* 7.? I think the act meant only purchases for money or other valuable consideration. From every part of this deed, as well as from the facts stated in the case, it appears to have been a conveyance grounded on mutual love and affection, and the consideration of marriage with the grantor's

(*a*) *Ante*, pl. 615.
(*b*) *Ante*, pl. 621.
(*c*) *Ante*, pl. 625.
(*d*) *Post*, pl. 637. note.
(*e*) 2 Co. 23.

daughter. The money consideration inserted is only the form of the conveyance. But Mr. *Bearcroft* argues, that under this conveyance, as it is framed, although the intention was to give a joint estate, the wife takes nothing; and, in that respect, the case differs from those that have been decided. This is the only distinction that is attempted to be made between them; and admitting it to exist, I am of opinion that this, although *a gift* to the husband, would not be within the statute. But, I think, the wife took an estate; for, by rejecting the latter part of the *habendum*, which cannot have effect, it will run, "to the husband and his "heirs, to the use of the husband and wife and their heirs," which is a good limitation of an use.—ASHHURST J. Taking this as a feoffment, I am not clear whether it might not be good to raise an use to a moiety in the wife; but it is not necessary to determine that point, because it may be good in another way. If no money was paid, it was a feoffment to the husband and his heirs without consideration, which should result to the use of the grantor; but this being a conveyance for natural love and affection, and the intent of the grantor clearly appearing, it will not result, but may be considered by the Court as a covenant to stand seised to the use of the husband and wife and their heirs.—BULLER J. I doubt whether we can take notice of the fact stated, that no money was paid: to admit evidence against the receipt might be dangerous to many titles. Mr. *Bearcroft*'s argument is, that the *habendum* shall not control *the premises;* that is admitted; and the consequence is, it is a grant to the husband and his heirs, to the use of the husband and wife. But it is said, that cannot be, because the words are contrary. I answer, that words which can have no operation must be rejected to give effect to the intent of the deed. The material question is on the construction of the act, and I am of opinion it extends only to pecuniary purchases, and it was so considered by the Court in *Rex* v. *Marwood.* (*a*) I think it does not go to an estate in the family conveyed by one part of the family to another.—Order confirmed.

(*a*) *Ante*, pl. 615.

684. *Rex* v. *Warblington* (*b*), *E. T.* 26 *G.* 3. 1 *T. R.* 241.—*W. B.*, father of the pauper, *J. B.*, about the year 1736 came into the parish of *H.*, with a certificate from *W.*, acknowledging him and his family to be settled therein. On the 20th of *October* 1748, *J. M.*, Esq. the lord of the manor of *H.*, granted, by copy of court-roll to *W. B.*, and his heirs, one parcel of the waste ground called the *G. P.*, parcel of the manor, and within the parish of *H.*, and which did not appear to have been granted by copy of court-roll before the said 20th of *October* 1748. *W. B.*, by virtue of the grant, entered on the said parcel of ground, and built a house thereon, and lived therein for several years after as the owner thereof. On the 12th of *November* 1751, he borrowed of *M. R.* the sum of 100*l.*, and, for securing the same, surrendered the premises into the hands of the lord. The surrender was, on the 4th of *October* 1752, presented, in due manner, at another court. On the 24th of *October* 1754, *M. R.* was, in pursuance of the surrender, and in consequence of the mortgage-money not being paid, admitted to the premises. On the 13th of *June* 1763, she sold her interest to *J. H.*, who was thereupon admitted; and after the death of *W. B.*, his heir at law sold his equity of redemption to the

A grant of a copyhold with 1*s.* fine, 1*s.* heriot, and 1*s.* rent, is a purchase within 9 G. 1. c. 7. § 1. but being under 30*l.*, does not confer a settlement.

(*b*) See Rex *v.* Hornchurch, *post*, pl. 657.

said *J. H.* for 20*l.* 17*s.*, and surrendered the same accordingly; and the said *J. H.* was admitted. It appeared that for many years before the death of *J. M.*, in the year 1764, that he was used to grant parcels of the waste of the manor for small pecuniary considerations; and a Mr. *N.*, who was called as a witness on the part of the appellants to produce the court-rolls of the manor of which he was steward, never knew *M.* to make any such grant without a pecuniary consideration. It further appeared that Mr. *N.*, for some years before, and till the years 1743 or 1744, was clerk to *M.* (who was an attorney); and that Mr. *N.*, in 1763, became steward to *M.* for the said manor of *H.*, and continued so to be till *M.*'s death: the value of the piece of ground, at the time of the grant, did not exceed 30 or 40*s.*: at the time of the grant, *W. B.* was a very poor and indigent man, living in *H.* It also appeared, by the inspection of the court-books of the manor, that it is not customary to express, in the surrenders or admissions of any tenant of the manor therein, the consideration for granting the same; and no evidence whatever was given, whether any pecuniary consideration was given for the said grant, or whether it was voluntary, and without a pecuniary consideration. It appeared, by a copy of one of the court-rolls read, by consent, in the Court of King's Bench, that *W. B.* was admitted in the year 1748, on the lord's grant, to one parcel of land, called the *G.*, and in the copy of his admission were these words, "fine 1*s.*, heriot 1*s.*, quit-rent 1*s.*;" and in the margin of all the copies was inserted, "fine 1*s.*"—WILLES J. The question is, Whether this grant was *a voluntary grant*, or made for *a valuable consideration?* From the facts stated, it appears that this grant was made for a small pecuniary consideration; then it is not a voluntary grant, and it being a purchase under 30*l.*, it does not give a settlement. Supposing it to be true, as contended, that the fine is a fee for alienation, at all events that is no answer to the heriot and rent reserved, for if a person meant to make a free gift, he would not reserve a heriot or rent; but both are here reserved. Another point has been made on the validity of this grant, because it is said that the land was not demised by copy before; but it is not expressly stated, that the land was not so granted before that time; and the Sessions having stated that this grant by copy was made so long ago as the year 1748, under which the grantee entered, and built a house, and spent 100*l.*, at all events the objection is got rid of, by saying, that however defective such a grant might originally have been, yet as there has been so long a possession under it, that is a strong presumption that it was good.—ASHHURST J. I think there does appear sufficient in this case to show that it was a purchase. A purchase is the acquisition of something for an equivalent. It is a *quid pro quo*. If there be a valuable consideration, it is a purchase in the legal sense; and it makes no difference whether it comes in the form of a present payment, or in any other way. Here there appears to be a *quid pro quo*, from the state of the case, and from the entries in the lord's court, which have been read; for there was a fine paid upon admission, and there was a valuable reservation of a heriot and rent, and that is a sufficient foundation for a purchase; and there having been a consideration, it cannot be called a voluntary gift.—BULLER J. This case is not altogether so correctly stated as it ought to have been. It is the

duty of the Sessions to find all the facts, and not leave it to us to infer them from the evidence. They ought to have stated, whether this was *a gift*, or *a purchase*. However, that would only be a reason for sending the case back to them to be re-stated, and we already see enough to convince us of what their opinion was; for they have found that the certificate still remains, by confirming the original order; and they have stated many facts, from whence, if I were at liberty so to do, I should draw the same conclusion that they have done.

635. *Rex* v. *Lopen*, *T. T.* 28 *G.* 3. 2 *T. R.* 577.—*J. G.* and his four brothers, children of *T. G.*, lately deceased, were removed from *S.* to *L.* On appeal, the Sessions confirmed the order, subject, &c. *S. D.*, the grandfather of *Susanna*, wife of *T. G.*, and great-grandfather of the present paupers, being seised for the term of his own life of a copyhold estate at *S.*, as recited in the bond annexed, which premises were subject, by the custom of the manor, to a widow's free-bench, married *M. T.*, who, previous to the marriage, entered into the said bond. About five years afterwards *S. D.* died, leaving the said *M.* his widow, who gave up the possession of the premises to *T. G.* and his wife *Susanna*, who were at that time parishioners legally settled in the parish of *L.*, according to the stipulations contained in the bond, who continued therein until the time of their deaths. *T. G.*, who survived *Susanna*, and who died in the year 1784, by his will devised the premises to trustees, to be sold for the payment of his debts, and to divide the surplus amongst his children, the present paupers. The premises were afterwards sold according to the directions, and for the purposes mentioned in the will. *M. D.* is still living, and a widow. The bond, referred to in the case, was given by *M. T.* to *T. G.*, in 100*l.*, in the year 1768. The condition recited, that *S. D.* was seised of and interested in the premises in question for his life, according to the custom of the manor; it recited the intended marriage between *S. T.* and *M. T.*; and that *M. T.*, in case the marriage took effect, and she happened to survive *S. D.*, (he dying seised of the premises), would be entitled to her free-bench; and that *M. T.* had agreed, in case she should become entitled, that she would permit and suffer *T. G.* and *Susanna* his wife (grand-daughter of *S. D.*), their executors, &c., to hold and enjoy, and for their own benefit to receive and take, the rents, issues, and profits of all the said copyhold premises (except the west end of the dwelling-house, consisting of two ground rooms, and one chamber over the same, which *M. T.* reserved to her own use, and also except 32 gallons of cyder, to be made at the expence of *T. G.* and *Susanna* his wife, yearly, of the fruit growing in the orchard, and in case of failure of apples sufficient for that purpose in any one year, then except one full hogshead of cyder in the succeeding year for the use and benefit of *M. T.* as long as she remained a widow); provided that the said *T. G.* and *Susanna* his wife, their executors, &c., did and should, from time to time, when and as often as occasion should require, repair the roof of the west end of the dwelling-house, and keep the same end habitable by the said *M. T.*, and also within one month next after the death of her said intended husband, furnish her with a bedstead, one table, and an iron pot; and that the said *M. T.* had also agreed, that in case she should marry again, whereby the said

If a woman, on her marriage with a copyholder of a manor, where the widows are entitled to *free-bench*, give a bond that the son of her intended husband, by a former wife, shall have possession of part of the copyhold estate after the death of her husband, on condition of his repairing the part of the house reserved for her, and, after the death of the husband deliver up the possession to the son according to the bond, the son gains a settlement by 40 days' residence on this estate.

T. G. and *Susanna* his wife would be deprived of the premises and of all interest therein, she, the said *M. T.*, would pay unto *T. G.*, his executors, &c., the sum of 60*l.*, within one month next after such second marriage. And the bond was conditioned for the performance of these articles.—BULLER J. The first question is, Whether this is *a voluntary bond?* as to which, it is sufficient to say, that it was made in *consideration of marriage;* therefore it is not a voluntary bond; and it will bind all parties concerned in it. The person whom the obligor married was seised of this estate, and might have disposed of it in his life-time as he pleased. The bond was executed by the widow, in consideration of marriage; she has reserved to herself a benefit by it; for the part of the house in which she was to reside, was to be kept in repair for her; the father and mother of the paupers were to provide her with furniture; and they were to make a certain quantity of cyder for her annually; therefore she must be bound by it. The next point to be considered is, Whether, in this case, a court of equity would have decreed a specific performance; and if not, what effect this instrument would have had? It is very much in the discretion of a court of equity, whether they will compel a specific performance or not: if the contract be unreasonable or unequal, they will not assist the party seeking relief, but cause him to pursue his remedy at law. But this is an instrument obligatory at law; and, therefore, it is unnecessary to consider whether a court of equity would or would not have decreed a specific performance of the contract; though I see no reason why they would not have ordered it to be carried into execution. It is material too to consider, that in this case the husband might have defeated the widow's claim, if he had chosen; for if he did not die seised, she would not have been entitled to her free-bench. Then we must take it that he held the estate till his death on the faith that the widow would afterwards deliver up the possession to the father and mother of the paupers. Therefore, under these circumstances, the parties to be benefited by the bond would be entitled to a specific performance of the contract. But there is another circumstance in the case still more decisive; the widow herself was so satisfied that she was bound by the bond, that on the death of her husband, she actually delivered up the possession according to her contract: and from that time till the year 1768 the pauper's father continued in possession under the idea that he was entitled under the bond. This man then so in possession had a good title against all the world but the widow; nay, the widow herself was so far bound by the bond, that she could not have recovered in ejectment. So that he had not only an equitable title, but he had also the possession; and no person could have recovered the estate from him.—GROSE J. declared himself of the same opinion.

A husband may gain a settlement by residing on an estate vested in trustees for the separate use of the wife.

636. *Rex* v. *Offchurch*, *H. T.* 29 *G.* 3. 3 *T. R.* 114.—*J. W.*, the father of the pauper, *H. W.*, in *January* 1765, and for the two next years, rented and resided upon a tenement of 100*l.* a year in *O.*, and was settled there. In *January* 1767, the wife of *J. W.*, who was mother of *H. W.*, the pauper, died; and in *June* 1767, *J. W.* married again with one *J. L.*, with whom he lived in *O.* until the year 1770, when they both went to, and resided at, *S.* for three years, without doing any act to gain a settlement there. In 1773 they removed to *L.* to a house vested by a settlement in

trustees to the separate use of the wife; with the usual clause that her receipt should be a discharge to the trustees for the rents and profits, and that the rents should not be subject to the husband's debts, &c. and lived therein to the day they were removed. — LORD KENYON C. J. This question has some novelty in it. Where a person resides on his own property, he gains a settlement by it; it having been considered as an excepted case out of the acts of parliament. Lord *Macclesfield* first held, that as a man cannot be disseised of his freehold, he is irremovable from it; and residing 40 days on an estate of his own irremovably, and gaining a settlement, are synonymous terms. (*a*) That, indeed, does not hold in all cases now; for by the 9 *G.* 1. *c.* 7. a purchaser of an estate for less than 30*l.* shall not acquire a settlement for any longer time than he resides upon it. Then here, if this had been the father's own estate, the settlement would have clearly devolved on the son. But it is said, that this is only the *equitable* estate of the wife. Now, supposing it had been the wife's *legal* estate, the husband would have been seised *jure uxoris*, and by residing upon it would have gained a settlement. Then, must it be a legal estate in order to confer a settlement? Certainly not. That was not doubted in *South Sydenham* v. *Lamerton*, or in any of the other cases. The question in that was, Whether the next of kin, without administration, had any estate whatever? and it was held that he had not. In *Rex* v. *Cold Ashton* (*b*), a doubt was made, Whether a next of kin having the sole right of administration, could not gain a settlement without taking out letters of administration? That shows that an *equitable* estate is sufficient to give a settlement. And, indeed, this position is confirmed by many other cases, and there are none in opposition to it. Then it is said, that this is going still farther, because this is only the equitable estate of the wife; and that even the wife herself had no right to reside upon it without the consent of the trustees. But she might, beyond all doubt, if she had chosen, have elected to take the *esplees* with her own hands; and that the trustees could not have prevented. The objection, then, against the husband's gaining a settlement here is too refined; for the wife had a right to reside on her property, and to communicate it to the husband. And although there is no case directly like the present, yet the principles of the decided cases go the length of determining this. — ASHHURST, BULLER, and GROSE Js. assented.

(*a*) See Rex *v.* Aythrop, Rooding, *ante*, pl. 616.

(*b*) *Ante*, pl. 617.

A conveyance from a father to his son in consideration of *natural love and affection*, and of 10*l.*, is not a *purchase* within 9 G. 1. c. 7.

637. *Rex* v. *Ufton*, *E. T.* 29 *G.* 3. 3 *T. R.* 251. — *J. H.*, the pauper, originally settled at *U.*, came to reside with his father, *J. H.*, about 23 years ago, on a cottage and premises at *M.*, which his father had occupied several years. By indenture, or deed of feoffment, dated 10th of *October* 1766, with livery of seisin indorsed, and duly executed, in consideration of natural love and affection, and of 10*l.* to him paid by the pauper, *J. H.*, the father, granted, enfeoffed, and confirmed the said cottage, &c. to the pauper in fee. About three years and a quarter afterwards the pauper obtained from the parish of *U.* a certificate dated the 1st of *January* 1770, duly signed, certified, and allowed, acknowledging that he and his wife and family were inhabitants legally settled in *U.* And the pauper afterwards occasionally received relief from *U.* during his residence in the cottage at *M.* The father of the pauper lived with the pauper upon the premises till

his death, which happened about eight years ago. The pauper was his eldest son and heir at law, and continued to reside upon the premises until the year 1788. The pauper, by lease and release, dated 15th and 16th of *February* 1788, conveyed the same premises to *J. S.* for 50*l.*; which sum appeared upon evidence to be a satisfaction for a debt due for necessaries provided by *S.* for the pauper and his family, and for money lent. The pauper being afterwards turned out of possession by *S.*, to whom, after the sale, he had become a tenant, returned to *U.*, and was removed to *M.*

(a) *Ante*, pl. 615. — LORD KENYON C. J. In *Rex* v. *Marwood* (a), it was contended that *purchase* under the 9 *G.* 1. *c.* 7. was to be understood as contradistinguished from *descent*; as in a former case (*b*) upon the subject. But the Court exploded that idea; and said, that the legislature only intended to prevent persons who made small purchases for pecuniary considerations from gaining a settlement; but that donations from a father to his child did not come within the statute. Now, in this case, we are bound to take notice that this conveyance was in consideration of natural love and affection, as well as 10*l.* And we cannot suppose that 10*l.* was the real value of the estate, for there are circumstances in the case to show the contrary: the case itself states that it was afterwards sold for 50*l.* Perhaps the 10*l.* was taken, because the father had some other child, upon whom he wished to bestow something arising out of this estate, and he took this mode of doing it. This, being *a donation* from a father to a son, is clearly not *a purchase* within the 9 *G.* 1. *c.* 7., notwithstanding part of the consideration was in money. — ASHHURST and BULLER J. assented.

If the mortgagee of several houses, after recovering possession in ejectment, permit the mortgagor to inhabit one of them for a particular purpose, the latter gains no settlement by such residence, for he was not in possession as mortgagor.

638. *Rex* v. *Catherington*, *T. T.* 30 *G.* 3. 3 *T. R.* 771. — The pauper, *W. B.*, gained a settlement in *C.* prior to *Michaelmas* 1789, by residing upon a freehold estate belonging to his wife. The pauper was also entitled to the equity of redemption of a freehold estate in *C.*, consisting of several dwelling-houses, of the annual value of 13*l.* 5*s.*, which had been mortgaged by his father to *E. M.*, which mortgage was afterwards assigned to one *A.* In *Michaelmas* term 1788, *A.* delivered declarations in ejectment to the pauper as landlord, and to the several tenants in possession of the estate in *C.*; and thereupon the tenants attorned to *A.* About *Michaelmas* 1789 the pauper asked permission of Mr. *N.*, the agent and solicitor for *A.*, to inhabit one of the houses, part of the mortgaged estate, and which was then untenanted, *for the purpose of overlooking some repairs*, which he proposed to do upon the estate with an intention to sell the same, and pay the mortgage-money. In consequence of such permission, he went into one of the houses, and inhabited the same for upwards of three months, when he was removed by the present order. The pauper did not,

(*b*) This was the case of Rex *v.* Sawbridgworth, H. T. 3 G. 2. *MSS.* — *Edward Shepherd*, father to the pauper, surrendered to him a copyhold estate of 1*l.* 5*s.* a year in *Albury*, to which he was admitted, and lived upon it a year and a half, and then sold it, and the Sessions held this to be no settlement. *Lee* moved to quash this order, contending that it was *a voluntary gift* to the son. — *Sed per Curiam*: This is *a purchase*, though the party paid no money for it. Every estate not acquired by *descent* is in law *a purchase*, and the same construction must be made upon this act, and the party cannot hope to be in a better condition, because he paid no money for the land: and the order of Sessions was confirmed. S. C. 2 Sess. Cases, 161. 1 Bar. K. B. 297. Burr. S. C. 56. *accord.*

during such residence, do any thing towards the repairs of any of the houses, or towards the sale of the estate. No agreement was made between the pauper and Mr. *N.*, with respect to any rent to be paid by the pauper for such house. — LORD KENYON C. J. It has been long established, that an equitable title is sufficient to give a settlement. But in the case alluded to the mortgagor was in possession. So, by the act for regulating votes of county elections, either the mortgagor or mortgagee in possession may vote. But in this case the party had neither *jus in re* or *ad rem*. — BULLER J. In the case of *Rex* v. *St. Michael's, Bath* (*a*), it was said that either a mortgagor or mortgagee might gain a settlement *according to circumstances;* one of those circumstances is *possession:* and upon possession all the questions have turned.

(*a*) *Ante*, pl. 629.

639. *Rex* v. *Eatington*, *H. T.* 31 *G.* 3. 4 *T. R.* 177. — *J. H.*, the pauper, being legally settled at *H. N.*, married the daughter of one *G. M.*, who was seised in fee of a cottage in *E.*, in which he resided. Immediately upon his marriage in 1780, the pauper and his wife went to reside with *M.* in the cottage, where they resided for three months, when they were removed by an order to *H. N.* During the time of the pauper's residence at *H. N.*, which was about a year and a half, an only son of *G. M.* died; upon which *G. M.*, who was old and infirm, applied to the pauper and his wife to come and live with him at *E.*, and take care of him; and in order to induce him so to do, agreed to convey the cottage to the pauper. Accordingly, by indentures of lease and release, dated the 28th and 29th of *November* 1783, *G. M.*, in consideration of 36*l.* therein mentioned to be paid by the pauper to *M.*, granted and conveyed the cottage to the pauper in fee. In the release was the following proviso; *viz.* "Provided always, and it is "hereby declared and agreed by and between the said parties to "these presents, and it is their true intent and meaning, that it "shall and may be lawful to and for the said *G. M.* to live, "inhabit, dwell in, and *occupy the said cottage or tenement with the "appurtenances as he heretofore has done, and now does, for and "during the term of his natural life;* any thing herein-before con- "tained to the contrary thereof in anywise notwithstanding." No money was paid by the pauper to *G. M.* at the time of the execution of the deed, as a consideration for the purchase; but the premises were *then* of the full value of 30*l.* Immediately after the deed was executed, the pauper and his wife went to reside at *E.* with *G. M.* at his house, so conveyed, *and resided there with him till they were removed by the present order.* In 1785 a mortgage of the cottage was executed by the pauper for 12*l.*; the whole of which he received. In *May* 1790 a conveyance of the cottage was executed by the pauper and *G. M.* to *H.* in fee; 31*l.*, part of the consideration-money, were received by the pauper, and the remaining 3*l.* were paid to *G. M.* — LORD KENYON C. J. The material question here is, Whether, by the conveyance by lease and release, an immediate estate in possession was vested in the releasee? For it is admitted that, unless it conveyed an estate of present interest, the pauper did not gain a settlement by residing in *E.* It has been contended, that the former part of the release having conveyed a fee to the pauper, the subsequent proviso is so totally repugnant to it that it must be rejected. But an estate for life to one is not totally repugnant to, but consistent with, an

If A, residing on a cottage of his own, grant it by lease and release to B in fee, in consideration of 36*l.*, with a *proviso*, "That A shall live in and *occupy* the said cottage, with the appurtenances as he theretofore had done, and then did, for life:" B only takes a remainder after an estate for life in A, and, therefore, has not such an interest during A's life, as will enable him to gain a settlement by a residence on the estate.

estate in remainder to another. And it cannot be contended that the proviso must be rejected because it stands last in the deed, and restrains the estate before created; for in all deeds of settlement, where uses are first limited, various powers, exceptions, and different modifications of them, which are to arise as shifting uses, are afterwards introduced. Then if it be immaterial in what part of the deed the proviso is inserted, (and indeed it is so,) the fair construction of the whole deed, taken together, is, that an estate for life was reserved to the father, and an estate in remainder granted to the pauper. If this question had depended on the first words in the proviso, I should have thought that they would have been satisfied by determining that only a liberty to inhabit the cottage was reserved to the father; but the word "occupy" carries the interest reserved still farther, and shows that the whole estate was intended to be reserved to him. And if we were to go into the subsequent transaction, it is manifest that this was the intention of the parties; for the father joined with the son-in-law in making the conveyance in 1790, which shows that the parties themselves conceived that they had a power to convey. If such be the construction of the conveyance, the estate in remainder was not come into possession when the order of removal was made, and consequently the pauper had not that which was necessary to confer on him a settlement, namely, a present interest. Therefore it is unnecessary to go into the other point. — ASHHURST J. In whatever light this case is considered, the pauper had not such an interest as entitled him to gain a settlement in *E*. If this be considered as a purchase for a pecuniary consideration, it was not of the value of 30*l*. after deducting the father's life-estate. But then it was contended, that this conveyance was made as well in consideration of blood and natural love and affection, as of money; and therefore that it does not come within the statute 9 *G*. 1. Even taking that to be so, it shows what was the intention of the parties, and falls in with the construction put on the deed by my Lord, that the father only conveyed the remainder to his son-in-law expectant on the determination of his own life-estate. The word "occupy" in the proviso is extremely material to show that the deed must have this operation; for it is a reservation of the thing itself, of the whole estate. For a licence to occupy an estate for a particular time is a lease of the whole estate for that time. Therefore the son-in-law had no right to the possession of the cottage during his father's life, and, consequently, did not gain a settlement by living there. — BULLER J. The material question is, Whether, by the terms of the proviso, the father is to be considered as having reserved merely the liberty to live in the cottage, or an estate for life? and there is no doubt but that the latter was intended. Something more was meant than a bare licence to inhabit or live in the house, for the word "occupy" is added to them: and it does not even rest there, for these are followed by other words, "as he heretofore has done, and now does, for life." Then how did he occupy it before? He had *the whole* before. If it had been intended that the father-in-law should reserve merely a right to live in the cottage, and that the son-in-law should also have the same right during the father's life, the former would have reserved a right to inhabit *particulur rooms* in the house; but he reserved *the whole* for his life. The intention, therefore, clearly

was, that the father-in-law should enjoy the estate for his life, and that the pauper should only take the remainder expectant thereon. — GROSE J. not being in Court when the case was argued, gave no opinion.

The executor of a tenant from year to year, of an estate under 10*l.* a year, may gain a settlement by residing on it 40 days, though he do not prove the will.

See Rex v. Netherseal, *ante*, pl. 175.

640. *Rex* v. *Stone*, *E. T.* 35 *G.* 3. 6 *T. R.* 295. — The pauper, *Syms*, was born in *Stone*, where his father was settled. At *Easter* 1791 he and his family went to live with his father-in-law *E. B.* in a tenement in the township of *Salt* and *E.*, consisting of a cottage and about six acres of land, of which *E. B.* was tenant from year to year, and which was under the yearly value of 10*l.* *E. B.* died about *Michaelmas* 1791, having first made his will, whereby he gave and bequeathed all his personal estate and effects to the pauper, in trust that he would allow the testator's wife a sufficient maintenance thereout during her life, and that at her decease his personal estate and effects should be divided among his (the testator's) children, *viz. G.*, *J.*, *M.*, and *F. B.*, and *E.* the wife of the pauper; and he appointed the pauper sole executor of his will. Upon the testator's decease the pauper possessed himself of all his personal estate and effects under the will, and continued in the possession of the cottage and lands without entering into any agreement with the landlord, buying and selling every thing, paying the rent, and maintaining the widow until the time of his removal, which was upwards of three years, but he did not prove the will of the testator till the 25th of *October* 1794, three days previous to his removal. — LORD KENYON C. J. I cannot distinguish this from the case of *Mursley* v. *Grandborough* (*a*), and the other cases, in which it has been held, that an executor or devisee of a leasehold estate of less value than 10*l.* *per annum* gains a settlement by residing upon it for 40 days. It is said, however, that this pauper was a mere trustee; but no one had a right to take the estate from him; he took it liable to all the testator's debts, and the creditors would have had a right to call on him for payment of their debts before he made any distribution of the testator's property under the will. In fact, the pauper resided on this estate for more than 40 days; and the established rule, which we ought to preserve with anxiety, is, that though a person cannot acquire a settlement by a purchase for less than 30*l.* paid, yet if he take such an estate by devise, he may; so though he cannot gain a settlement by renting a tenement of less value than 10*l.* a year, yet if such an estate devolve on him by operation of law, he may gain a settlement by 40 days residence on it. The distinction taken between a tenant from year to year and a tenant for a term of years is rather a distinction in words than in substance. A tenant from year to year is entitled to estovers and the same advantages as a tenant for a term of years. In truth, he is a tenant from year to year as long as both parties please. And considering how many large estates are held by this tenure, it would be dangerous to say that the term ceased at the end of the year, because then the landlord might lose his right of distress. Although on my first reading this case it struck me as a very minute interest to confer a settlement, on consideration I am satisfied, that we cannot, without overturning a variety of cases, determine that the pauper did not gain a settlement by residing on it for 40 days. — ASHHURST J. The pauper gained a settlement in the parish where this estate lies, on this principle, that he resided as on an estate of

(*a*) *Ante*, pl. 609.

his own, and continued there 40 days irremovable. As to his not having any permanent interest in it, it is not so; he had a permanent interest in it while his office of executor continued; his object and duty as an executor might have been defeated if he could have been removed. And whether he had or had not a beneficial interest in the estate is perfectly immaterial as far as concerns this case, it being sufficient that he resided there 40 days for a necessary purpose, and could not have been removed from it. This case cannot be distinguished from the cases alluded to. — GROSE J. It certainly seems strange at first, that an executor should be able to gain a settlement by residence on his testator's estate, when such a residence by the testator would not have conferred a settlement on him. But we must consider the difference of the situation of these two persons: the one comes in by his own contract, the other by the act of the law. This distinction was taken in *Rex* v. *Uttoxeter* (*a*), where it was held that if any interest in a tenement, even of less value than 10*l.* a year, devolved on another by act of law, he had a right to reside on it, and might gain a settlement by residence on it for 40 days; and in the same case *Aston* J. mentioned *Rex* v. *Sundrish* (*b*), where it was determined that any person who has an interest by act of law may dwell upon it as his own, and is irremovable; and if he remain 40 days, gains a settlement; for he cannot be taken to come into the parish upon the ill views which are provided against by the act of 13 & 14 *Car.* 2. *c.* 12. and is, therefore, not within the purview of that statute. — LAWRENCE J. It was settled in *Doe* d. *Shore* v. *Porter* (*c*), that if a tenant who holds from year to year die intestate, his administrator has the same interest in the land that the intestate had. Then what was the interest of the pauper's testator? He had a right to continue on the estate another year, unless six months' notice to quit were given; and, of course, the pauper his executor, had the same right. With regard to the objection arising from the want of the probate, there is a case in *Dyer* (*d*) that gives a decisive answer to that; a termor devised his term to another whom he made his executor, and died; the devisee entered and died without any probate; and it was held that the term was legally in the executor by his entry, and an execution of the devise without any probate. So that if there had been no probate of the will in this case, still the term was vested in the pauper, the executor.

(*a*) *Ante*, pl. 620.

(*b*) *Ante*, pl. 611.

(*c*) 3 T. R. 13.

(*d*) Dy. 367. a.

A cottage built on a spot of ground given to the father of the pauper, and which had continued uninterruptedly in the family near 20 years, is a sufficient estate to confer a settlement.

641. *Rex* v. *Butterton*, *H. T.* 36 *G.* 3. 4 *T. R.* 554. — *J. H.* the father of the paupers, being settled in *B.*, and residing in *K.* under a certificate from *B.*, about the year 1770 married the daughter of *R. O.*, who also resided in the parish of *K.* By feoffment, with livery of seisin indorsed, dated the 22d *July* 1775, one *P.*, in consideration of 10*l.* 10*s.* conveyed a piece of land in *K.* to *R. O.* in fee. Soon after the purchase, *O.* gave *J. H.*, his son-in-law, a part of the land so purchased, but it did not appear that he ever executed any conveyance of it. *H.* immediately built a house upon the land which cost him above 100*l.* and he resided in it for 14 or 15 years without paying any rent or acknowledgment to *O.*, who lived in a house nearly adjoining. He then removed to another house in the same parish, and let the house he had built to a tenant, receiving the rent to the time of his death, which happened about three years after he quitted it.

Since *H.*'s death, his eldest son and heir (*a*) had continued to receive the rent, and had mortgaged the premises for 42*l.* 18*s.* *O* died before his son-in-law *H.*, leaving another daughter besides *H.*'s wife, and having had a son who died in his father's life-time, leaving children, who are now living; but no claim was ever made to, or rent demanded for, this house since it was built, either by *O.* in his life-time, or by any other person since his death. — LORD KENYON C. J. As 20 years have nearly elapsed since the time when this land was given to the pauper's father, and as no claim has ever been made, either on the pauper or his father, the case of *Ashbrittle* v. *Wyley* (*b*) is an authority to show that the Court ought not to permit the title to this estate to be determined on an order of removal. The strict rules to be observed on the trials of ejectments ought not to be applied to settlement cases. After such a length of possession as this, perhaps a conveyance may be presumed to have been executed. And in *Rex* v. *Cold Ashton* (*c*), where there had been a possession for nearly 20 years, *Wilmot* J. said there ought not to be a nicety of computation in a settlement case, but the Court may presume a conveyance. And even if no conveyance were executed to the pauper's father, and a claim were now made by *O.*'s heir at law, he would perhaps be told in a court of equity that, as *O.* stood by while the pauper's father built on this land and treated it as his own, he could only resume the possession on certain terms. — GROSE J. What was said by *Wilmot* J. in the case of *Cold Ashton* is extremely applicable to this case. — LAWRENCE J. I remember a case some years ago, in which Lord *Mansfield* would not suffer a man to recover, even in ejectment, where he had stood by and seen the defendant build on his land.

(*a*) Who was not removed by this order.

(*b*) *Ante*, pl. 610.

(*c*) *Ante*, pl. 617.

642. *Rex* v. *Great Farringdon*, *E. T.* 36 *G.* 3. 6 *T. R.* 679. — *W. H.*, upon his marriage, went to reside upon a cottage in *S.* belonging to his grandfather *J. A.*, which his grandfather agreed to make over to him; and a written agreement to that purpose was made, but not stamped. *H.* fitted up the cottage at his own expence, and resided upon it ever after, in uninterrupted possession *as his own*, till the time of his removal in 1795, without any rent, or any thing being ever claimed of him by any person in respect of the possession thereof. *J. A.*, the grandfather, died in *December* 1783, leaving the pauper's mother, *Martha*, his only child, and married to *J. H.*, the pauper's father. *M. H.* the mother, died in *January* 1786, leaving *J.*, her husband, and the pauper *W.*, her eldest son and heir at law. — LORD KENYON C. J. No interest passed to the pauper by the unstamped agreement; it was not legally in evidence before the Sessions. Then on the death of the grandfather this estate descended to his daughter, who might have reduced it into possession, but she did not; and in order to make the husband tenant by the curtesy there must be a seisin in fact in the wife. (*d*) Then as the daughter, the pauper's mother, did not reduce the estate into possession, it descended to the pauper who is seised in fee.

A cottage belonging to the grandfather of the pauper, whose mother, on her father's death, never reduces the estate into possession, gives a settlement to *her son*, who, on her death, takes the cottage *in fee*, but not to *her husband*, who does not take as *tenant by the curtesy*.

(*d*) *Vide* Co. Litt. 15. b. 29. a.

643. *Rex* v. *Edington*, *H. T.* 41 *G.* 3. 1 *East*, 288. — *M. M.* spinster, being in possession of a cottage in *E.*, which had been granted to one *W.* by lease for a term of 99 years originally determinable on three lives, of whom one only was living, purchased a reversionary interest in the cottage for a further term of 99

A cottage leased for 99 years, determinable on lives, purchased by the pauper's

wife before marriage, was, in the life-time of her first husband, conveyed by them to a trustee, in trust, that he should, by sale or mortgage, raise 10*l.* (for the benefit of the parish by whom the family had been before relieved to that amount) interest and charges, and, after payment of the same, in trust, to re-assign the premises. The parties always continued in possession; and it did not appear whether the money were ever paid; or what was the value of the cottage: Held, that on the death of the first husband, the pauper, who married the widow, gained a settlement by residing 40 days in the cottage, of which she had retained the possession.

years, to commence at the determination of the first term, but determinable with the lives of herself and her brother *H. M.*; and a lease in reversion was accordingly made to her. *M.* having married one *W. D.*, by indenture of the 7th of *July* 1776, made between *W.* and *M. D.* of the one part, and *J. P.* of *E.* of the other, after reciting the said lease, and that *W. D.* was indebted to the officers of *E.* in 10*l.* and upwards for monies paid, laid out, and expended in the maintenance of *M.* the wife, and the children of the said *W. D.*, and that it was agreed to make a security of the said premises to *P.*, as a trustee for the parishioners, for the payment of the said 10*l.* and interest; it was witnessed that for securing the 10*l.* and interest the said *W.* and *M. D.*, for the considerations therein mentioned, did assign to *P.* the cottage and premises, in trust that *P.* should by sale or mortgage of the said premises, and by the receipt of the rents and profits thereof, or by some or one of those ways and means, raise the said 10*l.* and interest thereof, together with such costs and charges as should attend raising the same, and after payment of the said sum of 10*l.*, and such costs and charges as aforesaid, in trust to re-assign the said premises to the said *W.* and *M. D.*, or one of them, or such other person as should be entitled to the premises, or such parts thereof as should not be sold, applied, or otherwise disposed of. *W. D.* died, leaving *M.* his widow, who afterwards married the pauper, then settled in *Urchfont*. *M.* and her first husband in his life-time, (and after his death and her second marriage, and also after the death of the surviving life named in the first lease, she with the pauper her second husband, for the space of four years) continued in the occupation of the cottage and premises to the time of her death, and the pauper continued to pay the lord his quit-rent during his possession (*a*), and at different times repaired the premises, but particularly at one time expended the sum of 18*s.*; but it did not appear whether the lord had any knowledge of the assignment. The Sessions decided that there was an equitable estate in the said cottage, in *M.* the wife of the pauper *W.B.*, at the time of their marriage, and that by reason thereof, and by their subsequent residence thereon for more than 40 days, the pauper gained a settlement in *E.* — LORD KENYON C.J. Some points of this case are very clear. Generally speaking, in the case of a purchase, if the value be under 30*l.* no settlement can be gained by virtue of it; that is, where it comes to the party by his own act: but if it come to him by operation of law the value is not material. That is the case here; for the purchase was made by the wife before the coverture, and it came to the husband upon his marriage by act of law; and he might even during the coverture have sold it without the assent of his wife. But the objection now made is, that this was not such an interest in the husband as was sufficient to enable him to gain a settlement by residence on the property, on account of the antecedent conveyance to *P.* the trustee. But what was that conveyance? It was for the purpose of securing the repayment of a sum of money expended by the parish for the use of the man's family. Lord *Mansfield* in the case of *St. Michael's, Bath* (*b*), said, it was an affront to common sense to say that a mortgagor has no interest in the mortgaged premises. The law recognises his interest: in the case of a freehold, he has a right to vote for

(*a*) It was said at the bar that the interest had since determined.

(*b*) *Ante*, pl. 629.

members of parliament. Now, the conveyance in question is equivalent to a mortgage, and no more. Consider what in strictness is the interest of a mortgagor: after the usual time given for the payment is expired, the estate becomes absolute in the mortgagee at law: but neither the courts of law or equity lose sight of what the parties intended. In mortgage deeds there is sometimes introduced a clause that the mortgagee may repay himself by sale of the mortgaged premises, without the concurrence of the mortgagor: but a court of equity would, I believe, control the exercise of that power. I am sure they would control it in an instance like the present, upon payment of what was due. The trustee in such a case would be bound to execute a reconveyance: and here there is an express clause to that purpose. Virtually, therefore, this is no more than a mortgage, and must be governed by the same rules. With respect to the case of *St. Michael's, Bath* (*a*), principally relied on, is very plain, that the greatest stress was laid on the circumstance of the pauper's possession having been obtained by fraud. After touching upon the interest which he had in the premises conveyed, Lord *Mansfield* says at the end of the case, "there is still "another and a stronger ground in this case; for the possession "was obtained by fraud." Now, if the other point had been clear, he would not have used such an expression. Here the possession was not fraudulent; and, therefore, I am of opinion that the second husband, the pauper, gained a settlement by his residence on this estate, which came to him by operation of law on his marriage.— GROSE J. I cannot distinguish this from the case of a mortgage. The purpose of the conveyance was to secure the money. The parties interested continued afterwards in possession: the pauper paid the quit-rents and repaired the premises. Now, what more could a mortgagor in possession do? In the case of *St. Michael's, Bath*, another reason is given for the judgment than what is now relied on: the possession there was fraudulently obtained by the pauper: it was expressly found to be against the consent of the trustees, who had before taken to the possession. Whereas here the pauper always continued in quiet possession of the premises.— LAWRENCE J. The principal argument against the settlement set up in this case is grounded on a *dictum* in the case of *St. Michael's, Bath*, in the first part of the opinion delivered by Lord *Mansfield*; without which there is no pretence for the objection. For it cannot be disputed that a conveyance to a trustee in trust by sale, or mortgage, and receipt of the rents and profits to raise 10*l.* is merely a security for that sum; and it is plain that the parties themselves so considered it, by providing for a re-assignment of all or so much as should not be sold, applied, or otherwise disposed of. Now in that case Lord *Mansfield* begins by saying that which is decisive as applied to this. "If the estate on which a "pauper resides is *substantially* his property, that is sufficient, "*whatever forms of conveyance* there may be:" and therefore he says, that a mortgagor in possession gains a settlement, "because "the mortgagee, notwithstanding the form, has but a chattel, and "the mortgage is only a security." If, then, the object be merely to secure money, whether the conveyance be in the form of a trust like the present, or of a mortgage, it is in substance the same thing. — LE BLANC J. I am of opinion that the pauper gained a

(*a*) *Ante*, pl. 629.

settlement by residing on this estate, in which he had an equitable interest; and I consider that the assignment to the trustee was no more than a security for so much money. According to what was said by Lord *Mansfield* in the case of *St. Michael's, Bath*, the Court will not look to the mere form of the conveyance, but will consider what the parties really meant by it. Then, if this were substantially a mortgage, as I think it was, it is clear that the pauper gained a settlement by residing on the premises. — Order of Sessions affirmed.

Where a pauper purchased a leasehold tenement for less than 30*l.*, and afterwards conveyed the whole term to one, in trust to let the premises, and out of the rents and profits to repay himself 10*l.* advanced thereon, and then to apply the rents and profits to the separate use of the pauper's wife during her life, and afterwards to the pauper's own use for life if he survived her, and afterwards amongst their children; and the trustee suffered the pauper to continue to reside in the house for above 40 days, till becoming chargeable to to the parish he was removed: Held, that he gained no settlement by such residence; for he had no immediate interest remaining in him at the time, but at most a doubtful and contingent future interest; it being uncertain whether the 10*l.* would ever be paid off,

644. *Rex* v. *Tarrant, Launceston, H. T.* 43 *G.* 3. 3 *East*, 226. — About 12 years ago *J. C.*, the pauper, gained a settlement in the parish of *T. R.* by renting above 10*l.* a year: in *June* 1795 the pauper, being then married, made a purchase, for less than 30*l.*, of a leasehold tenement in the parish of *T. L.* for 99 years, determinable on three lives, under the Marquis of *Buckingham*, and resided there till *December* 1801; when, being in distress, and relief refused by both parties, the pauper, in consideration of 10*l.* advanced him by *D.*, and for divers other valuable considerations, did grant, bargain, sell, and assign all his said leasehold estate with his said lease to *D.*, to hold to the said *D.*, his executors, &c. for the remainder of the term; in trust to let the premises, receive the rents, and thereout repay himself the said sum of 10*l.* with interest, and costs and charges; and after such repayment, to receive and pay the clear rents and profits to *E.*, the wife of the said *J. C.*, during her life, to her sole and separate use, not subject to the debts or contracts of her husband, and her receipt alone to be a discharge for the said rent: and after her decease, if *J. C.* survived her, in trust to pay the rents and profits to the said *J. C.*, to and for his own use and benefit, during his life; and after the decease of the survivor of them, the said *J. C.*, and *E.* his wife, and the repayment of the said sum of 10*l.* with interest and costs, in trust that the said *D.*, his executors, &c. should assign the said premises, during the then residue of the said term, unto the children of the said *J. C.* then living, equally to be divided, if more than one, if only one, to such only child: provided that if any child of the said *J. C.* and *E.* should die, during their lifetimes, leaving issue, then the said *D.* to assign to such child the share his parent would have had. A licence to assign was granted to *C.* under the Marquis of *B.* After the execution of this deed, on the 5th of *December* 1801, *D.* suffered the pauper to continue residing on the premises, and the pauper was residing there when he became chargeable, and until he was removed by the order of two justices, dated the 5th of *February* 1802. — LORD ELLENBOROUGH C. J. If the case were *res integra*, I should have done no more than apply my understanding to the plain letter of the statute 9 *G.* 1. *c.* 7. §. 5., which says, that "no person shall be "deemed to acquire any settlement in any parish *for or by virtue* "*of any purchase of any estate or interest* in such parish, whereof "the consideration for such purchase doth not amount to the sum "of 30*l.* *bond fide* paid, for any longer or further time than such "person shall inhabit in such estate," &c.; that is, for so long only as there is an union of *interest and occupation* in the thing. We must, however, take care not to contravene any of the authorities which have put a construction upon these words, but preserve an uniformity of decision. The case of a mortgagor has

been pressed upon us; but was this a residence of the pauper as mortgagor? Surely not. He had parted with the absolute interest which he had in the premises. For even when the 10*l.* is paid, (which *non constat* is ever likely to be done,) the trustee is to account for the rents and profits to the wife for her separate use during her life: and I think there is much weight in the observation which was made against any claim of the husband to reside upon property so circumstanced in right of his wife. In the first instance, however, and during the time of his residence there, the trustee was entitled to the rents and profits till the 10*l.* advanced by him was paid: it was contingent whether that would ever be done, whether the wife would ever be entitled to the rents and profits, and, if she became so, it was also contingent whether the pauper would survive her, so as to have any claim of his own. I should, therefore, be much inclined to ask with Lord *Mansfield*, in *Rex* v. *St. Michael's, Bath* (*a*), "what interest had the pauper "in this estate? He made an immediate conveyance to trustees, "not a mortgage, to pay off debts," &c. Now this was no mortgage, but an absolute conveyance for the discharge of a debt; and even the payment of the 10*l.* would not entitle the pauper to redeem, but would only raise the wife's trust estate. In the last-mentioned case Lord *Mansfield* observed, that it was very doubtful whether after payment of the debts there would be any *surplus*: so here I might say, there was no chance of a surplus of estate to the pauper upon which he would have a right to reside. Upon the whole, this was at most such a doubtful contingent interest in the pauper, that without clashing with any of the adjudged cases I am authorized to say that no settlement was gained by the pauper's residence on this property. The other Judges declared themselves of the same opinion. — Order of Sessions quashed.

and even if it were, that not giving him any right to reside upon the premises.

(*a*) *Ante*, pl. 629.

645. *Rex* v. *Martley*, *E. T.* 44 *G.* 3. 5 *East*, 40. — Two justices by an order removed *W. B.*, his wife, and children, by name, from the parish of *D.* to the parish of *M.* The Sessions, on appeal, confirmed the order, subject, &c. On the 25th of *November* 1754 the dean and chapter of *W.* granted to *H. B.*, of *D.*, (the grandfather of the pauper,) a lease of a cottage and garden, called *A.*, in *D.*, containing by estimation about half an acre, then in his occupation, to hold to him, his heirs, and assigns, for his own life (he being then 61 years old), the life of his son *T.*, aged 18, and the life of his daughter *S.*, aged 16, at the yearly rent of 2*s.* 6*d.* Upon these premises *H. B.* resided till his death, paying to the dean and chapter the yearly rent of 2*s.* 6*d.*; and at his death, leaving no will, he was succeeded in possession by his eldest son, *W. B.*, the pauper's father; who, on the 22d of *July* 1784, died, leaving a will, by which he devised the premises to his wife for life, remainder to *W. B.*, the pauper. At the time of his father's death the pauper resided in another parish, and continued so resident for about two years afterwards, during which time his father's widow resided on the premises. At the end of the two years the pauper came to reside with his mother on the premises in question, and continued as part of her family till the 2d of *February* 1790, when the pauper having married, his mother demised the premises to him for her life, at the yearly rent of 1*l.* 11*s.* 6*d.*, and went to reside elsewhere, leaving the pauper in the sole occupation of the premises. *T. B.*, the second life named

One who is resident on an estate granted to him for lives in consideration of 2*l.* 2*s.* fine and 1*s.* rent, cannot be removed therefrom though actually chargeable. But *semble* he cannot gain a settlement by 40 days' residence as on his own estate under the stat. 9 G. 1., the consideration being under 30*l.*

in the lease, died on the 27th of *August* 1795. On the 13th of *July* 1798, the mother of the pauper, who was the tenant for life under the will of the pauper's father, died. The pauper having continued in possession from the death of his mother, on the 26th of *November*, in the same year, the dean and chapter, on the application of the pauper, and on payment by him of a fine of 2*l.* 2*s.*, granted a new lease of the premises in question at a new rent of 1*s.*, to hold to the pauper, his heirs, and assigns, for three new lives, which are still existing. The Sessions found that at this time all the lives in the first lease were extinct; *H. B.*, the original lessee, and his son *T.*, having died in *W.*, as above stated, and *S.*, the third life, having been absent from the country above 30 years, and not having been since heard of by her relations. The new lease was considered as an entire new demise, and not a renewal of the old one, or in consideration of the surrender of it. Previous to the death of the pauper's father the pauper acquired a settlement in the parish of *M.*; but from the time he became possessed of the premises to the present time the pauper has constantly resided upon them, and paid not only the yearly acknowledgment of 2*s.* 6*d.* to the dean and chapter of *W.* during the existence of the first lease, but also the yearly rent of 1*s.* reserved under the new lease thereof. From these premises in *D.* the pauper and his family, having become chargeable to that parish, were removed to the parish of *M.*; the new lease, of the 26th of *November* 1798, being still in force. — TOUCHET and PEAKE, in support of the order of Sessions, first observed, that the old lease was at an end before the pauper's interest under the new lease commenced; for two of the lives were found to be extinct prior to 1796; and when the new lease was granted to the pauper in 1798, the third life under the old lease had not been heard of for 30 years, and, consequently, by reference to the statute 19 *Car.* 2. *c.* 6., must be presumed to have died after the expiration of the first seven years, no proof being made to the contrary. Then no settlement could be gained under the new lease, when the pauper lived on the estate in his own right; the purchase having been made by the pauper himself for a consideration under 30*l.* in value. And though it may be said that this was a voluntary grant of the dean and chapter, and not a purchase for a pecuniary consideration; yet, according to *Rex* v. *Warblington* (*a*), the consideration need not be in money paid at the time in order to bring the purchase within the stat. 9 *G.* 1. *c.* 7. § 5.: for there a grant of a copyhold with 1*s.* fine, 1*s.* heriot, and 1*s.* rent, was holden to be a purchase within the statute, which could not confer a settlement. And here is a fine of 2*l.* 2*s.*, and a 1*s.* rent. [LORD ELLENBOROUGH C. J. There would be no difficulty in deciding that this was a purchase under 30*l.* within the statute. But admitting that; and presuming the third life under the first lease to be extinct; still, how can this order, removing the pauper from *his own estate*, be supported? This is an objection, distinct from the question of the settlement.] In answer they observed that this objection had not been made below. That here the pauper was actually chargeable before the order of removal, which differed it from the other cases. Where persons were heretofore removed as *likely to become chargeable*, there could be no presumption of consent on their part. But where a

(*a*) *Ante*, pl. 634.

man applies to a parish for relief, as here, he must be taken to consent to all things necessary to afford him that relief in the due course of law, and, consequently, to consent to a removal under an order of justices to the place of his last legal settlement, where he is properly maintainable. Then, if he consent, there is no disseisin of his freehold, which is the ground on which the illegality of a compulsive removal from a man's own estate is put by *Foster* J., in *Rex* v. *Aythrop Rooding* (*a*); which, however, was not a case of freehold, but of copyhold. But there the person removed was not chargeable; and though *Foster* J. thought that that would make no difference, yet Lord *Mansfield* and *Dennison* Js. seem to have been of a different opinion, particularly the former, who said that the wife could not be removed from her husband's property, "upon being *only likely* to become chargeable." Then, as in *Clipton* v. *Ravistock* (*b*), it was decided that magistrates could not make an order for the relief of a pauper on the parish to which he belonged, unless he were within the parish at the time; and as one who is possessed of property within a parish where he resides is not entitled to relief there, as casual poor, but his property must first be applied to his support, it follows, that unless he were liable to be removed, he might not be able to obtain present relief for want of a purchaser of such property. — LORD ELLENBOROUGH C. J. If the inference of consent to the removal, derived from the mere act of applying to the parish for relief, be pushed so far, it may as well be argued that the pauper consented also to a conveyance of his property, if that be a step towards entitling himself to relief. I cannot think that what fell from Mr. Justice *Foster* in the case of *Aythrop Rooding*, when he said that the party's right to remain on his freehold was founded on Magna Charta, is to be treated lightly. He was speaking from analogy to the case of freehold; the premises there being copyhold. But he was not liable to draw comparisons rashly; and the reason of the thing applied equally to both. Here the party, whilst he resided on his own estate, was not liable to be removed. — GROSE J. was of the same opinion. — LAWRENCE J. The power of the justices to remove any person is founded on the statute 13 & 14 *Car.* 2. *c.* 12., which extends to "any person who shall come to settle in any tenement under the "yearly value of 10*l.*;" and these words having never been deemed to relate to persons living on their own estates, whether acquired by purchase or otherwise, or at whatever value, it followed that every person residing irremovably for 40 days in the parish where his own property was, gained a settlement: that encouraged persons to make small purchases for the purpose of settling themselves in particular parishes: and it was to remedy that inconvenience that the statute of 9 *G.* 1. was passed, which provides that "no person shall be deemed to acquire any *settlement* in any "parish by virtue of any purchase of any estate or interest in "such parish, whereof the consideration, &c. doth not amount to "30*l.*, &c. *for any longer or further time than* such person *shall* "*inhabit in* (*c*) *such estate*; and shall *then* be liable to be removed." &c. — LE BLANC J. The pauper was not precluded from ob-

(*a*) *Ante*, pl. 616.

(*b*) *Vide post*, pl. 779.

(*c*) *Vide* Dunchurch *v.* South Kilworth, *post*, pl. 668., and Rex *v.* Houghton Le Spring, *post*, pl. 678.

taining relief, because having a settlement in another parish he might always obtain relief by going there.—Both orders quashed.

A *sole* next of kin has such an equitable interest in a leasehold tenement of the intestate, that she gains a settlement by residing 40 days in the same parish after the intestate's death, before administration granted to her.

646. *Rex* v. *Horsley*, *E. T.* 47 *G.* 3. 8 *East*, 405.—Removal from *H.* to *A.* Order quashed, subject, &c.—The pauper is the widow of *J. B.*, who died in 1801, legally settled at *A.* *W. P.*, the father of the pauper, died about *Christmas* 1802, intestate, possessed of a leasehold house in *H.* of 40*s.* *per annum*, for a term of years; leaving a widow, and the pauper his only child, whom he had by a former wife. *W. P.*'s widow died about a month after her husband. Upon the death of *W. P.*, the pauper, his daughter, who had previously occupied the said leasehold house by permission of her father, continued to reside in it till the death of her mother-in-law, when she left the house, and let it to a tenant, who occupied it for three years from that time, and paid the rent for it to the pauper. The pauper, during this time, and until the date of the order of removal, resided with her family at *H.* On the 11th of *January* 1806, the pauper obtained letters of administration to her father *W. P.*; and on the 29th of the same month she sold and assigned her interest in the said premises to *W. D.*, who has ever since continued in possession.—The cases of *Rex* v. *Cold Ashton* (*a*), and *Rex* v. *Offchurch* (*b*), were cited.—LORD ELLENBOROUGH C. J. This is the case of a *sole* next of kin, exclusively entitled, after the death of her mother-in-law, to administration of the personal estate of the intestate, her father. And the question is, Whether the pauper having, after she became such sole next of kin to the intestate, resided more than 40 days in the parish, in which a leasehold tenement of 40*s.* *per annum*, belonging to the intestate, lay, thereby gained a settlement in that parish? This is not a settlement claimed under the statute 9 *G.* 1. *c.* 7.; the estate not having come to the pauper by purchase; but it is claimed on the mere ground of a 40 days' residence in a parish without being removable. [His Lordship then stated, that the letters of administration could not operate by relation, so as to render the pauper not removable at a time past, if during such time she had been removable for want of them; adverted to the opinion of the Judges in *Rex* v. *Cold Ashton*, and *Rex* v. *Northcurry* (*c*), as to the difference between the residence of a *sole* next of kin, without administration granted, and where several persons in equal degree have all of them an equal right; and concluded as follows:] The effect, however, of a 40 days' residence by a sole next of kin, has never yet received a judicial decision. The circumstance occurred, indeed, in point of fact, in the case of *South Sydenham* v. *Lamerton*, 1 *Str.* 57 (*d*): but it was argued and decided on a different ground. Adverting to the intimation given by other judges, of what would be their opinion upon such a case as the present, if it should come before them, and to the reason of the thing, according to which, the exclusive right to enforce the proper means of acquiring a legal title to the property, (coupled with the actual enjoyment of it in the mean time through the occupation of a tenant,) gives so much colour of right to reside, without being removed, within the parish in which the property is situate, as to exempt such residence from being considered as a vagrant intrusion into a parish in which the party has nothing of *his own*, within the purviews and scope of the poor-laws; and to the determinations thereupon: we are of

(*a*) *Ante*, pl. 617.
(*b*) *Ante*, pl. 636.
(*c*) *Ante*, pl. 631.
(*d*) *Ante*, pl. 164.

opinion, that in a case in which the language of no statute upon the subject precludes us from so determining, and where no principle of convenience, nor any decided case, is contravened by such a determination, we are well warranted in considering that a settlement was gained by a residence of 40 days within the parish in which a pauper, thus circumstanced in respect to real property there situate, resided; and of course that the order of Sessions, discharging the order of removal, must be affirmed.

A guardian in socage, residing on the ward's estate for 40 days, gains a settlement in the parish; and cannot be removed from the possession of it at any time.

647. *Rex* v. *Oakley*, *H. T.* 49 *G.* 3. 10 *East*, 491. — Removal of *J. K.* and *M.* his wife, from *B.* to *O.* Order confirmed, subject, &c. — *J. H.*, a former husband of the pauper, died in 1801, possessed of a cottage in *B.*, (built upon some land enclosed by his father from the waste about 38 years before) and leaving *M.* his widow, and four infant daughters, all under the age of 14 years. The widow continued with her daughters to reside upon the estate (which was of a less annual value than 10*l.*) for more than 40 days after the death of her husband, before her eldest daughter attained the age of 14; and in 1806 *M.* married the pauper *J. K.*, who was then settled at *O.*, and who, together with his said wife and her children, resided on the said estate from the time of the said marriage to the time of the said removal. *M.* gained no settlement by any right of dower in the said estate. — The questions intended to be submitted to the Court were, first, whether *J.* and *M. K.*, or either of them, gained a settlement by their respective residence on the estate as above stated? Secondly, Whether *M. K.* communicated any settlement gained by her residence before marriage to her husband *J. K.*? Thirdly, Whether both, or either of them, were irremovable at the time of the order of removal? — LORD ELLENBOROUGH C. J. There is no doubt in this case, but that the mother, who was guardian in socage to her daughters, had a right to elect whether she would let the estate or occupy it for their benefit; and unless she let it, the law which imposes the duty of guardian upon her, would necessarily protect her in the personal occupation and superintendance of it. The only difference which can be pointed out between the cases of an executor or administrator, and of a guardian in socage in this respect, is, that the one is accountable for the profits by statute, and the other at common law. The law considers a guardian in socage as entitled to the possession of the ward's property, and incapable of being removed from it by any other person. Such a guardian has not a mere office or authority, but an interest in the ward's estate. It is laid down in *Wade* v. *Baker*, 1 *L. Raym.* 131, that he may maintain trespass and ejectment, avow for damage feasant, make admittance to copyhold and lease in his own name. He cannot, indeed, convey the property absolutely as an executor or administrator, because the nature of the trust does not require it in the one case as it does in the other; but he may dispose of it during his guardianship, though accountable afterwards to the heir. The widow, therefore, had such an interest in the estate as rendered her irremovable from it. — GROSE J. The question is, Whether the widow was irremovable from the property for 40 days? She had a right during her guardianship, either to lease or occupy the estate; and if she chose to occupy it, she was irremovable from it, as from her own, though liable to answer afterwards to the wards for the profits. — LE BLANC J. The

case, though new in circumstance, is not new in principle. It is governed by the decisions which have taken place, that in order to make persons irremovable on account of having property in the parish, it is not necessary to have a beneficial interest in it for themselves, but it is sufficient that they reside there for some beneficial purpose to another. Now a guardian in socage has a right to the possession, and, until she leases, it is for the interest of the wards that she should occupy the estate, and there can be no right to remove her from it to their prejudice: as in the case of an administrator, or of a sole next of kin even before administration granted, who has a right to reside on the leasehold property; and such residence for 40 days will give him a settlement in the parish. — BAYLEY J. If a guardian in socage can maintain trespass and ejectment in his own name, and avow for damage-feasant on the land, this shows that he has a right to occupy it. And this is confirmed by the old method of pleading by guardian in socage, which was that he entered as guardian into the tenement in question, and was possessed. In like manner an administrator has a right to the possession of leasehold property, and is only accountable for the profits. — Order of Sessions quashed.

Where trustees of lands, held in trust to pay 40*s. per annum*, out of the rents to the poor, and the residue to a schoolmaster to be nominated by them, nominate a schoolmaster by an agreement, by which they are to pay him a salary less than such residue: Held, that such appointment though irregular in its form under the will, is sufficient to give him a life-interest in the school-house, &c. of which he was put in possession, and to enable him to gain a settlement by 40days' residence thereon; and the finding of the Sessions "that the appointment was *fraudulent*" must be understood as referring to the fraud.

648. *Rex* v. *Owersby-le-Moor*, *H. T. 52 G. 3. 15 East*, 356. — Removal from *M.* to *O.* Order confirmed, subject, &c. — The trustees of certain lands, devised in trust to pay 40*s. per annum* out of the rents to the poor of the parish, and the residue to a schoolmaster whom they should appoint to teach the poor children of the town of *M.* to read the Bible, entered into the following agreement with *W. S.* (the husband of the pauper): Memorandum of an agreement made 13th *June* 1807, between the trustees (*nominatim*) of the one part, and *W. S.*, schoolmaster, of the other part; whereas the said trustees are possessed of or entitled to a certain school-house, yard, garden, and premises, situated at *M.*, which they have agreed to let unto the said *W. S.* for the purpose, and in the manner, as is hereinafter mentioned, it is hereby agreed by and between the said parties hereto, that the said *W. S. shall have the possession and the use and occupation of the said school-house, yard, garden, and premises, for the purpose of teaching the poor children of the said parish of* M. *to read in the Bible, pursuant to the will, devise, and bequest of Mrs.* B., *deceased*: and in consideration of the said *W. S.* agreeing to teach the said poor children of *M.* to read in the Bible as aforesaid, *he the said* W. S. *is to reside upon the said premises rent-free, and to be paid and allowed by the said trustees a salary for the first year that he shall so teach of* 10*l.*; and the sum of 15*l.* for every year after that he shall so continue to teach the said poor children to read in the Bible as aforesaid. It was also further agreed between the parties, that the trustees should pay the above salary; that they should have the power of suspending *W. S.* for two years in case of misbehaviour; and that upon the death of *W. S.* they should turn out from off the said premises, *the executors, administrators, or assigns*, of the said *W. S.*, *and appoint another person to the situation of schoolmaster thereto*, in such manner as they might think proper. *W. S.* on the 13th of *June* 1807, entered upon the school-house, yard, and garden, in *M.*, (the premises mentioned in the said agreement,) being part of the farm so devised in trust as aforesaid, and he resided on those

premises till his death, about three years and a half afterwards. He taught the poor children of the parish to read during that time, and received from the trustees for the first year a salary of 10*l.*, and afterwards a salary of 15*l.* per annum. The annual value of the school-house, yard, and garden, is about 5*l.* The remainder of the devised premises, consisting of a farm-house and 20 acres of land, was occupied by *C. B.* the tenant of the trustees at the rent of 52*l.* 10*s.* per annum. The Court thought the above appointment *fraudulent*, and in no respect consistent with the will. — GROSE J. delivered the opinion of the Court. We are of opinion, that a settlement was obtained in *M.* The agreement of the 13th of *July*, 1807, was, we think, in substance an appointment of *W. S.* to the situation of schoolmaster, to teach the poor children of *M.* to read the Bible: and though the Sessions have stated that that appointment was *fraudulent*, and in no respect consistent with the will of Mrs. *B.*, it is clear that their meaning is not that it was a *colourable appointment*, under which he was not to discharge the duties of schoolmaster, but that it was an appointment upon such terms as tended to deprive him of great part of the emoluments attached to the situation. There was no fraud in him: he was to discharge every duty the situation of schoolmaster required: but the fraud was in those who appointed him, in attempting to withhold from him what Mrs. *B.*'s will entitled him to receive. By that will the schoolmaster was to have all the profits of a farm at *M.*, except the yearly sum of 40*s.*, which was to be paid to the poor of the parish. The schoolmaster, therefore, for the time being, was to a considerable extent, to the extent of all but 40*s.* a year, the *cestuy que trust* of that farm; and had the trustees kept in their own hands sufficient to raise the 40*s.* a year, and put the rest into the possession of the schoolmaster, they could not have dispossessed him, whilst he continued schoolmaster, unless he misused the property, or unless what they retained to raise the 40*s.* a year had proved insufficient for that purpose. In this case the trustees allowed *W. S.* to have the possession of a house, yard, and garden, which were part of this farm, and they retained what was greatly more than sufficient to answer the 40*s.* a year. He had this possession, therefore, not by purchase, so as to be within the stat. 9 *G.* 1. *c.* 7.; not by renting so as to be within the stat. 13 & 14 *Car.* 2. *c.* 12.; but in the character of a *cestuy que trust* residing upon what was for the time substantially his own; and as the trustees could not have removed him, we are of opinion, that his residence for more than 40 days gave him a settlement in this parish, and that the removal of his wife and children from this parish cannot be sustained. — Orders quashed.

dulent withholding by the trustees of part of the rents, &c. from the schoolmaster, and not as imputing fraud to the schoolmaster himself.

649. *Rex* v. *Haddenham*, *E. T.* 52 *G.* 3. 15 *East*, 463. — Removal from *T.* to *H.* Order confirmed, subject, &c. — At the Lent assizes for the county of *G.*, in 1790, *S. H.* the father of the pauper, was convicted of a felony, and at the trial of the appeal, the following instrument under the sign manual, was produced: "*G. R.* Whereas *S. H.* was at the last assizes holden "for our county of *G.*, tried and convicted of horse-stealing, and "had sentence of death passed on him for the same; and whereas "some favourable circumstances have been humbly represented to "us in his behalf, inducing us to extend our grace and mercy

An attainted felon, having been discharged by an order of the secretary of state, under the sign manual, signifying his Majesty's pleasure to grant him an unconditional

pardon, and directing his name to be inserted in the next general pardon, (of the issuing of which pardon there was some negative evidence,) and having afterwards purchased a copyhold for more than 30*l.* to which he was admitted upon surrender formally made, and resided on and received the issues and profits of it for nine years without impeachment of his title, gained a settlement by such residence thereon for 40 days, and communicated such his settlement to an unemancipated child, part of his family.

" unto him, and to grant him our free pardon for his said crime: " our will and pleasure is, that you cause him the said *S. H.* " to be forthwith discharged out of your custody, and that he be " inserted for his said crime in our first and next general pardon " that shall come out for the *Oxford* cricuit, without any con- " dition whatsoever: and for so doing this shall be your warrant. " Given, &c." Properly signed and directed to the high sheriff of *G.* The case then stated that search had been made in the office of the clerk of assize of the *Oxford* circuit, and it did not appear that any general pardon, including the said *S. H.* had been made out, or that there was any other general pardon for the said circuit to be found in the said office from the time of the conviction of the said *S. H.*, whilst the late Mr. *M. P.* the then clerk of assize of the said circuit, held that office; and it did not appear to the Court by any other evidence that any such general pardon, including the said *S. H.*, or any special pardon to him under the great seal, had been granted; that pursuant to the direction of the instrument under the sign manual aforesaid, the said *S. H.* was shortly afterwards discharged, and has been since at large unmolested for his said crime; that in 1803, the said *S. H.* purchased of one *J. C.* for 105*l.* two cottages, with the apurtenances in *H.* copyhold of inheritance held of the manor of *H. with C.*, which were surrended to the use of the said *S. H.*, his heirs, and assigns; and that he was thereupon admitted tenant thereof, according to the custom of the said manor; and immediately took possession of and resided on the premises so purchased by him, and still continues to reside on part thereof, and has sold and surrendered the remainder; and that he has not since done any other act whereby to gain a settlement. The pauper formed part of her father's family in 1803. — In support of the orders it was contended, that *S. H.*, notwithstanding his attainder, might purchase land, though he could not hold it against the Crown; and that while he held it with the consent of the Crown, and resided on it, he was irremovable from it; and it was said that this question arose from what fell from Lord *Kenyon* in *Rex* v. *St. Mary Cardigan.* (*a*) — Against the orders it was contended, that in order to gain a settlement by residence on a man's own property, he must have some estate or interest vested in him; but an attainted person cannot hold freehold, and much less copyhold; and the sign manual, with the secretary of state's letter, could not restore his capacity. — LORD ELLENBOROUGH C. J. It was only said by Lord *Kenyon* in *St. Mary* in *Cardigan*, that whether the man could acquire a settlement after the attainder, was another question from that which he was then called upon to decide; and so it was, but that was only declining to decide a larger question than he was there called upon to do. The point raised is of some doubt, and of more general importance than usually arises on settlement cases. In the form of it a purchase was made, which satisfies the terms of the stat. 9 *G.* 1. *c.* 7. *s.* 5., that no person shall acquire any settlement in any parish, for or by virtue of any purchase of any estate or interest in such parish, whereof the consideration for such purchase doth not amount to 30*l.* *bonâ fide*, paid, for any longer time than such person shall inhabit such estate, &c. Now this was in its form a purchase for more than 30*l.*, and he resided on it for more than

(*a*) *Ante*, pl. 45.

40 days, and he has not been removed from it. Who, then, was in a condition to remove him for the 40 days? The lord, who has by admittance accepted him for his tenant, even if he could after that admission object to him, has not objected. If the lord had no notice of the objection at the time of the admittance, I do not mean to say that he was afterwards precluded from making the objection, but he has not, in fact, objected, and the tenant has now continued for nine years in possession; and by the statute of limitations, part of the rents, issues, and profits can no longer be recovered from him; so that if he had a defeasable estate during the first 40 days, he has held the estate undefeated for more than that period, which cannot now be impeached. And whether or not the Crown could have impeached his title, he has now held the estate under a title not defeated for above 40 days. — The other Judges assented. — Orders confirmed.

650. *Rex* v. *Holm East Waver Quarter*, *T. T.* 52 *G.* 3. 16 *East*, 127. — Removal from *H.* to *A.* Order quashed, subject, &c. — The pauper, being settled at *A.*, resided with her father, who was also settled in *A.*, upon an estate in the removant township, which he had purchased for less than 30*l.* and continued to reside with him till his death. The father died, leaving a will, by which he devised this estate, consisting of a cottage and land, under the annual value of 10*l.*, to a trustee, in trust after his death, to let the same to farm during the natural life of his daughter, the pauper, and to pay her the rents thereof (after deducting the expences) during her life; and after her death, in trust to and for the use of his right heirs. The pauper continued to reside upon the premises for more than 40 days after the death of her father in the removant township, the trustee never having interfered. The question reserved was, Whether *J. A.* had such an estate in the premises, as to gain a settlement by her residence thereon for more than 40 days after her father's death? — LORD ELLENBOROUGH C. J. This species of settlement does not depend upon any term in a statute, but is an excepted case in the law, standing upon the rule, that a man shall not be removed from his own, whilst his trustee permits him to occupy it, and from which nobody else has a right to remove him. Here the pauper did not reside in the character of a tenant. — FELL having observed that she was only entitled to receive the surplus rents after deducting the repairs; his Lordship, after alluding to the different opinions held in *Shapland* v. *Smith* (*a*), observed, that whether the estate here were legal or equitable, it was still the pauper's own, and she could not be removed from it by an order of justices. — Orders confirmed.

A father having purchased a tenement for less than 30*l.*, devised it in trust to be let to farm during his daughter's life, and to pay her the rents after deducting the expences: Held, that by 40 days' residence thereon by permission of the trustee, after her father's death, she gained a settlement.

(*a*) 2 T. R. 446, 447. n.

651. *Rex* v. *Warkworth*, *E. T.* 53 *G.* 3. 1 *M.* & *S.* 473. — Removal from *A.* to *W.* Order confirmed, subject, &c. — The pauper, being settled in *W.*, resided in *A.*, and, at the time he was removed, was a freeman there. The pasturage of *A.* moor (the soil of which is in the lord of the manor) is of considerable value, and the freemen of *A.*, and no others, are entitled to common of pasturage thereon; each freeman being entitled, when resident, but not otherwise, to the pasturage of five stints of his own cattle, that is to say, five cows, or 25 sheep: the freemen have also a right to dig and cut peats, furzes, turves, and bushes upon *A.* moor for their own use, and to get limestone, slates, and freestones in the open quarries of that moor: they have the privilege also of

Where a pauper as freeman of a town, was entitled during his residence there, together with the other freemen, to a stinted common of pasture on a neighbouring moor for his own cattle, and also to a right

to cut peat for his own use, and get lime-stones, &c., on the moor, and to put his children to the town school, free of expence, at which two of his children were placed at the time of his removal; but it did not appear that he had ever used the common of pasture, or had any cattle with which to exercise it: Held, that these rights did not amount to such an estate as to make him irremoveable.

setting up their stalls in the market place, without paying any toll or stallage to the lord, and of having their children educated free of expence at the town school, at which school two of the children named in the order were placed at the time of the removal. The question for the consideration of the Court is, Whether the rights of the pauper, as a freeman of the borough of *A.*, amount to an estate, from which he is not legally removable under the statute 13 & 14 *Car.* 2. *c.* 12. — GROSE J. There is no doubt whatever in this case. When I read it, I was somewhat surprised that the Justices should have thought fit to reserve it. The question is, Whether the pauper was irremovable from his own estate? In order to determine that, we must enquire what estate he had. Now it appears that he had neither land nor house: it is said, however, that he had a right of common; but supposing he had, it does not appear that he was ever in the enjoyment of it, or had any cattle wherewith to exercise that right. The profit *a prendre*, or easement, as it has been called, never existed in him; how then can he be said to have been resident on his own? It cannot be considered as a residence on his own, when, in truth, he never had it. It would be absurd so to consider it. — LE BLANC J. The question is, Whether it appears to us that the pauper was irremovable during the period of his residence in *A.*, on the ground of being resident on his own estate? The case made in argument to show that he was residing on his own is this, that he was a freeman of the town, and as such entitled to a right of common on *A.* moor: and this right of common is said to be a tenement. But I think this is not, in strictness, a right of common, nor can it properly be said to be a tenement; it is a mere franchise. The argument, however, has been carried this length, *viz.* that supposing it to be only a franchise, still the pauper was irremovable from it. But to this I cannot accede. In the case, for instance, of a freeman of a corporation, who has a right of suffrage for the election of a mayor, or any other of the officers belonging to the corporate body, has it ever been decided that such a franchise made the person entitled to it irremovable? Here the pauper, as a freeman of the town, was entitled, if he had any cattle, to turn them on the moor. This, however, was a mere personal privilege, wholly unalienable, and not falling within the legal definition of a right of common. A privilege of this sort, I believe, has never yet been holden to be such an estate as to make the person entitled to it irremovable. It is a strong circumstance, that, notwithstanding the existence of such rights in different parts of the kingdom, no attempt like the present has hitherto been made. It appears to me, therefore, that this does not fall within the purview of those cases which have decided that a party is not removable from his own; and which doctrine, I admit, has been extended to cases where a party was merely residing in the parish in which his estate was situate, and not upon the estate itself. — BAYLEY J. The case does not find that the pauper had any house in which he was entitled to reside; and as a freeman he had no right of residence; but that must be acquired by other means. When he can obtain a residence, then as freeman, he is entitled, during such residence, to turn cattle on the common. But when he removes, he loses this privilege. I am not aware of any case, in which a privilege of this description has been holden to be sufficient to confer a settlement. It is a mere

local privilege, and attached to the person so long only as he is resident. From the frequency of these rights, which exist in many corporations in the kingdom, settlements must have been claimed in respect of them, had they been deemed sufficient for that purpose. This case is very different from the cases of removals from landed property. — Order of Sessions confirmed.

The mother of an infant copyholder under 14, was holden to be guardian by law of the copyhold, there being no custom of the manor for appointing a guardian, and, therefore, entitled to reside irremovably on the estate.

652. *Rex* v. *Wilby*, *E. T.* 54 *G.* 3. 2 *M.* & *S.* 504. — Removal from *D.* to *W.* — Order confirmed, subject, &c. In 1794, *I. B.*, a settled inhabitant of *W.*, went with a certificate to reside in *D.* In 1807, he purchased a copyhold estate, holden of a manor in *D.*, for which he paid 25*l.* and fees of admission. In 1813 he died intestate. After his decease, his widow and family continued to reside on the premises for the period of 143 days, and until their removal by the present order. The case contained other matter, and other points were intended to be made; but ELLENBOROUGH C. J. said, that the only point arguable was, Whether the mother was guardian by law to the copyhold of the infant? and upon that the Court would take time to consider; and on a subsequent day his lordship said, that the Court had looked into the cases, and particularly *Egleton's* case, 2 *Roll Ab.* 40 *Garde* p., and that it seemed to them that the mother was the guardian of the infant's copyhold, and as such was entitled to occupy the same irremovably. He added, that there were several authorities grounded on *Egleton's* case. — Order quashed.

Grandfather, father, and son, and the grandfather gave the father a piece of land, on which he immediately built a house, and continued in possession for 30 years, without paying any rent or acknowledgment, sometimes residing in the house with his family, and at other times letting it and receiving the rents: Held, that the son, who ceased to be a part of his father's family 15 years after the building of the house, was entitled to the settlement which the father gained by residing in the house.

653. *Rex* v. *Calow*, *T. T.* 54 *G.* 3. 3 *M.* & *S.* 22. — Removal from *W.* to *C.* — Order confirmed, subject, &c. About 30 years ago, the grandfather of the pauper gave the pauper's father a piece of land in *W.*, upon which the father immediately built a house, and lived in it with his family for several years. He then resided in a third parish for some years, during which time he let the house and received the rent for it. Ten years ago he returned to the house, and has resided in it ever since, and never paid any rent or acknowledgment for the house or land on which it stood. The pauper was a part of his father's family at the time the house was built, and continued so for about 15 years afterwards, when he married, left his father's family, and never returned. This case was argued on the ground, that although the pauper's father gained a settlement by residence in the house, such settlement was not communicated to the pauper, because the pauper had ceased to be a part of the father's family before the father's title to the house was perfected by a 20 years' possession. — LORD ELLENBOROUGH C. J. It is true that the father, at the time the son ceased to be a part of his family, had been in possession of the estate but 15 years; but he was in under some title or other under which he has continued the possession for 15 years more, and up to the present time; therefore, looking at the whole, we must infer a title in him at the former period. The subsequent possession reflects light back on the title under which he before held; and the Court will presume now, that his possession originated under a title, which would have prevented him from being dispossessed at the time when the son quitted his family. — BAYLEY J. It cannot be said that the father was in without any pretence of title, for the case states that he had a gift of the land. — DAMPIER J. The subsequent possession legalizes the former possession, and shows that it was of right. — Order quashed.

The taking a grant of a licence from the lord of a manor to erect a cottage on a piece of land, rendering an annual rent of 10s. 6d. as a quit-rent, and also a grant of a licence to inclose a piece of ground for a garden to the said cottage, both being parts of the waste, and building a cottage thereon, and residing in it a year and a half, were held not to confer a settlement; this being a licence only, and not a grant of any interest in land.

654. *Rex* v. *Horndon-on-the-Hill*, *H. T.* 56 *G.* 3. 4 *M.* & *S.* 562. — Removal from *O.* to *H.* — Order confirmed, subject, &c. The pauper *B. B.* being legally settled in *H.*, applied to the lord of the manor of *O.* for licence to erect a cottage on the waste lying within the parish of *O.* The Court rolls were produced by the steward, containing the following entry: "Manor of *O.*, 9th "*Nov.* 1805. At a general court baron then held, the lord of "the manor granted a licence to *B. B.* to erect a cottage on a "piece of land, containing, &c. rendering an annual rent of 10*s.* 6*d.* "at *Michaelmas* in every year, as a quit rent for the same." No other consideration was paid for the same. The pauper accordingly erected a cottage at an expence of more than 30*l.*, on the said piece of ground, and some months afterwards applied to the lord for a piece of ground for a garden. As to that the following entry was produced: "24th *March* 1806. At a special "court baron then held it was certified by the steward, and pre-"sented by homage, that at the then last court the lord of the "manor granted licences, &c. (reciting the former entry), and at "this court the lord of the manor granted licence to the said *B. B.* "to enclose a piece of ground for a garden adjoining," &c. No consideration was paid for this last piece of ground, and both were severally parts of the wastes of the manor, and their value did not exceed 5*l.* After the building of the cottage, the pauper resided on the premises about a year and a half, and then sold them to one *R.*, of which the following entry was made in the court rolls: "3d *June* 1809. At a general court baron then held, after "noticing that at a court held 9th *Nov.* 1805, licence was granted, "&c. (reciting the grant of the first licence); and that at another "court held 24th *March* 1806, licence was granted, &c. (reciting "the grant of the second licence), it was at this court presented "by the homage that the said *B. B.* had erected the cottage, and "enclosed the piece of ground, and that he had since sold and "disposed of the same unto *R.* for the sum of 40*l.*, whereby hap-"pened to the lord an alienation fine of 1*l.* 1*s.*, which had been "paid." None of these entries were stamped, and this was the only evidence of title produced. There was no evidence that those two pieces of waste land, or either of them, had ever been demised by copy of court roll, or that there was within the manor of *O.* any custom to create copyholds, or to grant any part of the waste thereof, to hold as in the nature of copyhold. *Rex* v. *Warblington* (*a*) was cited. — LORD ELLENBOROUGH C. J. A licence is not a grant, but may be recalled immediately, and so might this licence, the day after it was granted. We cannot take into our consideration what it may be conjectured a court of equity would determine in this case. Perhaps a court of equity might interfere, but can we say with certainty that it would? We ought to see that the party has clearly an equitable interest, and not merely such a claim as might possibly induce a court of equity to interpose in some way or other. This was a mere personal licence, and not like the case cited, a grant by copy of parcel of land. Here the pauper never had a more perfect estate than the licence gave him, that is a permission to occupy. — BAYLEY J. We cannot know how a court of equity would deal with this case; probably the utmost that it would do would be to grant an injunction if an ejectment was brought. But here is no grant of any interest in

(*a*) *Ante*, pl. 634.

land. I cannot say that the pauper took any estate, and, therefore, this would be a new species of settlement. — Order of Sessions confirmed.

655. *Rex* v. *Darlington, M. T.* 57 *G.* 3. 5 *M.* & *S.* 493. — On appeal, an order for the removal of *E.*, the widow of *Meredith S.*, and her children, from *B.* to *D.*, was confirmed, subject, &c. — *Mary S.*, of *B.* aforesaid, by her will, made the 10th of *December* 1814, devised the messuage or dwelling-house, with the garth and appurtenances thereunto belonging, situated in *B.* aforesaid, then in her occupation, and her pew in the church of *B.*, unto and to the use of *G. J.* and *W. M.*, their heirs and assigns, in trust for her niece, *M. A. S.*, daughter of her brother, *Meriton S.*, her heirs and assigns for ever; provided always, that if her said niece should die under the age of 21, without leaving lawful issue, then upon the like trust for her niece, *A. M. S.*, another daughter of her said brother, and subject to the like proviso in trust for her nephew, *Marmaduke S.*, son of her said brother, his heirs and assigns for ever; and she directed her trustees to receive the rents of the said messuage, &c., and to place the same out at interest, to accumulate; and on such one of her nieces first attaining the age of 21, the said accumulations to be paid her; and she gave her household goods and furniture, plate, linen, china, and wearing apparel, unto her said two nieces, share and share alike, and devised and bequeathed all her other messuages or dwelling-houses, hereditaments, and real estate, situate in *B.* aforesaid, and all her personal estate, (after payment and satisfaction of all her just debts and funeral expences, and the proving and registering of her will, wherewith she charged the same) unto and to the use of the said trustees, their heirs, executors, administrators, and assigns respectively, in trust to receive, and pay and apply the yearly rents and proceeds thereof, as the same should be received, for the benefit of her said brother, his wife and children, all or any of them, during his life, as they should think proper; and immediately after his decease, the same messuages or dwelling-houses, hereditaments, real and personal estates, should be in trust for her said nephew, *Marmaduke*, his heirs, executors, administrators, and assigns respectively; and if the said *Marmaduke* should die under the age of 21, without leaving lawful issue, then in trust for her nephew, *R. M.*, another son of her said brother, his heirs, executors, administrators, and assigns for ever; and she appointed the said trustees her executors. The testatrix died on the 20th *June* 1815, and upon her death, *Meriton S.* and his family immediately left *D.* (where they had acquired a settlement) and went to reside at *B.* *Meriton S.* did not occupy any part of the premises devised in trust for him or his family, but he occupied, by permission of the trustees, another cottage or dwelling-house, worth three or four pounds *per annum*, part of the property of the testatrix, devised in trust for the said *M. A. S.*, and resided therein from *June* 1815, until his death on the 28th of *December* following. *Meriton S.* at the time of the testatrix's death, and also at his decease, was an uncertificated bankrupt. The *personal estate of the testatrix, and the rents and profits of the premises were insufficient for the payment of her debts, and the trustees did not pay or appropriate any part of* the rents and profits for the benefit of *Meriton S.* or his wife, or any of their children, during the life

Devise to the use of trustees in fee, in trust (after payment of debts), to receive the rents for the benefit of her brother, M. S., his wife and children, all or any of them, during his life, as they should think proper, and after his decease, in trust for her nephew, &c.: Held, that M. S., who, after the death of testatrix, by permission of the trustees, occupied until his death, a cottage in the township where the lands devised were situate, did not acquire a settlement thereby, the rents and profits of the said lands having been insufficient to pay testatrix's debts; and M. S., at the testatrix's decease, and from that time until his own decease, being an uncertificated bankrupt.

of *Meriton*, the same being applied to the discharge of the testatrix's debts; and a considerable portion of debt remained undischarged at the time of the said *Meriton*'s decease. The question was, Whether the said *Meriton* took, under the devise, such an interest as enabled him to gain a settlement by his residence at *B.*?—LORD ELLENBOROUGH C. J. It was evidently the purpose of the testatrix, knowing probably that her brother, *Meriton S.*, was an uncertificated bankrupt, to abstain from giving him any vested interest; and, therefore, she leaves this matter entirely in the control of the trustees. After hearing the argument, I am clearly of opinion that there is not a scintilla of interest in *Meriton S.*, either legal or equitable, which entitled him to reside irremovably in the parish. He was only one of several persons to whom the trustees might, in their discretion, have given the rents, if there had been any to dispose of.—BAYLEY J. I am of the same opinion. The only question submitted to our consideration is respecting the interest of *Meriton S.*; as to which, it seems to me, that it is only by losing sight of the real question that any doubt can be raised. The foundation of this head of settlement is, that a man is not to be removed from his own. But here the trustees had the estate; first, for the payment of debts, which they were unable to pay in the lifetime of *Meriton S.*, consequently were not in a condition to empower him to take any thing.—ABBOTT J. I am of the same opinion. If *Meriton S.* had taken an equitable interest, the intention of the testatrix would have been defeated; because, whatever he took, being an uncertificated bankrupt, it would have passed to his assignees.—PER CURIAM; Order of Sessions confirmed.

There cannot be a guardian in socage of an equitable estate; and, therefore, where a pauper married the widow of a man who had paid for and been let into possession of a freehold cottage, and had died, leaving a daughter, but without having had any legal conveyance executed to him in his life-time; it was holden, that the pauper's residence in the cottage for 40 days did not confer a settlement on him, the widow not being guardian in socage to

656. *Rex* v. *Teddington* (*a*), *E. T.* 58 *G.* 3. 1 *B.* & *A.* 560.—Removal from *F.* to *T.*—Order confirmed, subject, &c. In 1801, *S. E.*, the then husband of the pauper's present wife, agreed to purchase of one *J. E.* a cottage in *F.*, no conveyance was made by *J. E.* to *S. E.*, and no evidence was given of any written contract between them, nor was there any proof of the particulars or terms of their agreement. It was admitted that *J. E.* received of *S. E.* 16*l.*, and that *S. E.*, by consent of *J. E.* entered upon the cottage, and continued in possession till *November* 1802, when he died intestate, leaving the pauper's wife, his widow, and a daughter *P.*, their only child and his heir, then about three years of age. The widow and the child continued to reside on the premises, and in *July* 1804 the former married the pauper, then legally sett'ed in *T.* Upon the marriage he came to live with his wife and her child *P.* on the estate, and continued with them more than 40 days. By indenture of feoffment, dated 12th of *September* 1808, (on which seisin was delivered,) *J. E.* granted the cottage in question unto and to the use of the pauper, his heirs and assigns, the consideration stated in this feoffment is 16*l.*, expressed to have been at or before the sealing and delivery thereof paid by the pauper the grantee to *J. E.* the grantor, but neither that nor any other sum was then paid; the only consideration being the money which *J. E.* had in 1801 received of *S. E.* By indenture of feoffment, dated 14th *October* 1808, the pauper and his wife, in consideration of 25*l.*, conveyed the premises to one *W. F.* The questions intended to be submitted to the Court are, Whether

(*a*) See Rex *v.* Berkswell, *post*, pl. 659.

J. E., the first husband of the pauper's wife, had such an interest in the estate as to give his widow the character of guardian in socage of their infant daughter: and whether the pauper, by his marriage with the widow, and his subsequent residence on the premises with her and her child for more than 40 days gained a settlement in *F.*? — LORD ELLENBOROUGH C. J. This is not an estate so clearly equitable, that a court of law can presume that a court of equity would, if applied to, clothe the party with the legal right to it. The case of *The King* v. *Oakley* (*a*) is clearly distinguishable from this; that was decided on the assumed ground of a legal estate. But this is at most a question of an equitable estate only, and we are to consider, not only whether a court of equity would order a legal estate to be conveyed, but whether in that case the conveyance would operate *ab antecedenti*, so as to constitute a legal estate in the father which would descend upon the heir; for unless that be so, the guardianship in socage, which is one of the incidents of the legal estate descending with it, will not go to the widow. I think, therefore, that the widow in this case was not, nor ever has been guardian in socage. If so, her husband could not, by residence in the parish, gain a settlement, and the order of Sessions must be confirmed. — BAYLEY J. I am of the same opinion. A court of law generally looks at legal rights only, and not at doubtful equitable estates. There are, indeed, equitable rights recognised by acts of parliament, of which perhaps courts of law are bound to take notice; but how can we in this case see that the party is entitled to an equitable estate? We do not know what was the original bargain between *J. E.* and *S. E.*; and the case states a subsequent conveyance to a stranger, and not to the heir at law, from whence a totally different conclusion from that contended for would seem to arise. Then the next question is, Is there a guardianship in socage, even supposing there is an equitable estate? Guardiandship in socage only applies to cases of legal estates, and no case can be cited where it has existed in an equitable estate. Therefore, on that ground alone, it will be sufficient to say, the Sessions have drawn the right conclusion. — HOLROYD J. I am likewise of opinion, that there is no sufficient estate in this case. Where there is a conveyance to uses not executed, or on trusts stated on the face of deeds, the one party has the equitable, and the other the legal estate, and in these cases for collateral purposes a court of common law will take notice of such an equitable estate. An equitable estate, however, is very different from an equitable right to have a conveyance of the legal estate. Here the party had only the latter, and if there be any doubt as to what a court of equity would do, this court cannot take cognizance of the estate. But supposing there is a sufficient equitable estate, there must also be a guardianship in socage, in order to confer a settlement in this case. It is to be observed that the law only took notice of the tenant of the legal estate. It was his duty to do all the services, if of age, and if he was an infant or lunatic, then the burthen and right was cast upon the guardian in socage. The guardian in socage, therefore, was only appointed in the case of a legal estate; for otherwise there would have been this incongruity, *viz.* that two persons would be bound to perform the services; first, the trustee, who, having the legal estate, was bound at common law to do them,

the daughter: Held also, that the Court will not take notice of doubtful equitable estates.

(*a*) *Ante*, pl. 647.

and also the guardian in socage for the *cestuique* trust. It is said that the widow, by an application to a court of equity, might be clothed with the legal estate; but the utmost that that court could do, would be to decree a conveyance of the legal estate of the infant, who would then take by purchase and not by descent, and there can be no guardian in socage except where the heir takes by descent. — Order of Sessions confirmed.

Where there is no custom for that purpose, the lord of a manor cannot make a new grant of a copyhold; and if he does, the grantee acquires thereby no settlement by estate: Held also, that a grant by the law of copyhold land, paying a yearly rent of 2*s.* 6*d.* (which rent, in a subsequent part, was called a quit-rent) is a purchase within 6 G. 1. c. 7., and being under 30*l.* confers no settlement.

657. *Rex* v. *Hornchurch*, *M. T.* 59 *G.* 3. 2 *B.* & *A.* 189. — Removal from *H.* to *P.* Order quashed, subject, &c. — By grant, dated *May* 13th 1799, *J. T.*, father of the pauper, obtained from the lord of the manor a piece of the waste in the appellant parish, where he built three cottages. The grant was as follows: *viz.* "To this Court came *J. T.* of the parish of *M.*, in his own proper "person, and *S.* his wife, and prayed to be admitted tenant to all "that piece or parcel of land or ground, being part of the waste "land of this manor, containing, &c. paying to the lord the yearly "rent of 2*s.* 6*d.*, to whom the lord of the manor, by his steward, "with the consent of the homage, granted and delivered seisin "thereof by the rod, to have and to hold the said piece or parcel "of ground, and premises, unto the said *J. T.* and *S.* his wife, "and the survivor of them, and to the heirs and assigns of the sur-"vivor of them, of the lord of the said manor, at the will of the "lord, by the rod, according to the custom of the said manor, at "the yearly quit-rent aforesaid; and by suit of Court and other "customs and services of right due and accustomed; and he "giveth to the lord for fine for such his admission, nothing of the "special favour of the lord, and so saving all right of the lord, he "is admitted tenant as aforesaid, and his fealty is respited," &c. The Sessions were of opinion, that this grant did not confer such an estate upon the pauper's father as would give a settlement. — ABBOTT C. J. I think that this grant was not a valid conveyance of the copyhold estate; because there is no custom stated for the lord to make a new grant of copyhold within this manor. Unless that custom exists, there can be no copyhold, except where the land has been at all times demised or demisable by copy of court-roll. The lord, therefore, had no right to make this grant; but even if the grant were good, I should still think that this case fell within the 9 *G.* 1. *c.* 7.; for here the land was originally demised for a mere money consideration, to be paid annually, and the sum stated in the case was a full consideration for all that the lord granted at the time. I cannot distinguish this case from *Rex* v. *Warblington* (*a*), which must govern our present decision. Then, if the case falls within 9 *G.* 1. *c.* 7., it is clear, that the consideration was less than 30*l.*, the sum required by the act. — BAYLEY and HOLROYD Js. concurred. — Order of Sessions confirmed.

(*a*) *Ante*, pl. 634.

I. F., being seised in fee of a cottage, demised the same to the overseers of the poor for 1000 years, reserving a pepper-corn rent, and continued to reside there. Being sick, his daugh-

658. *Rex* v. *Staplegrove*, *E. T.* 59 *G.* 3. 2 *B.* & *A.* 527. — Removal from *C.* to *S.* Order confirmed, subject, &c. — The pauper, being settled in *S.*, married, about 30 years ago, his present wife. Her father, *J. F.*, at that time was seised in fee of, and lived in a freehold cottage and garden in *C.* Having afterwards become a burden to that parish, on the 10th of *June* 1798, an indenture of that date was made between *J. F.* of the one part, and the four churchwardens and overseers of the said parish, *J. G.* being one, of the other part, by which indenture *F.*, for and in consideration of divers and sundry sums of money which he had already received

of the said churchwardens and overseers, and of the convenient and necessary sums which he must in future receive from them or from their successors, as also for and in consideration of the sum of *5s.*, did grant, bargain, sell, and demise unto them, the said churchwardens and overseers, and their respective successors, the cottage and garden above mentioned, with the appurtenances, to have and to hold the same unto them and their successors for the time being from the making thereof, for and during the term of 1000 years, without impeachment of waste, at the yearly rent of one pepper-corn, under the usual covenants made to and with them and their successors, or succeeding churchwardens and overseers for the time being. Shortly afterwards *J. F.* left the cottage and did not return to it again until a short time previous to his death, which happened in the year 1813, when he was again placed in it, with another pauper, by the overseers of the poor. During all this interval, the cottage had been occupied by paupers, placed there by the overseers of the poor. Soon after *J. F.*'s return, his daughter, the pauper's wife, came, by the permission of the overseers, to take care of her father, who was at that time very ill, and remained there at and after his death. About six weeks after this event, the pauper joined his wife, and then, as *J. F.* had died intestate, laid claim to the cottage as the property of his wife. The overseers having mislaid the deed above referred to, and consequently being then unable to substantiate their claim to the cottage, the pauper and his family continued to reside there until the date of the order appealed against; but the deed having been then recently found, the pauper and his family, who had become chargeable to the parish, were removed, under the above order of the above magistrates, from the cottage alluded to, to *S.* Three of the original lessees have been long dead, and *J. G.* is the sole survivor. The question for the opinion of the Court was, whether the pauper gained a settlement by estate in right of his wife, by residing more than 40 days in the cottage in question, under the circumstances above stated. — BAYLEY J. now delivered the opinion of the Court. In this case, which was argued last term, in the absence of my Lord C. J., there were two questions; one, Whether 40 days' residence in a parish, in which the pauper had a freehold, subject to a lease for years, would be sufficient to confer a settlement by estate? and the other, Whether it would be so, if the residence were upon that estate, and without right? At the time of the argument, the first point appeared to us to be settled, especially by the case of *Rex* v. *Houghton-le-Spring* (*a*) which establishes that such residence is sufficient; and it was upon the second point only that we wished for time to consider. Upon that point the facts are these: The father of the pauper's wife had a freehold cottage in *C.*; in 1793, he let it to the parish-officers, and their successors, for 1000 years, and they took possession; in 1813, he was placed in it, with another pauper, by the parish-officers, and the pauper's wife came to nurse him. He died there in the same year, and his daughter continued in the cottage; and, at the end of about six weeks, her husband, the pauper, joined his wife, and laid claim to the cottage, as his wife's property. The parish-officers had mislaid the conveyance to them, and therefore could not withstand this claim, and the pauper and his family continued their residence from 1813 to 1818, when the pauper, having be-

ter and her husband came, by permission of the parish-officers, to reside with and take care of him; after his death, the daughter being his heir, they continued to reside there above 40 days, claiming a right to the possession: Held, that they thereby gained a settlement, being entitled to the reversion, and the residence not being fraudulent.

(*a*) *Post*, pl. 678.

come chargeable, and the parish-officers, having recently found their conveyance, the removal in question was made; and the point submitted to our consideration by the Sessions, is this, Whether the pauper gained a settlement by this residence? and we are of opinion that he did. The Sessions have found no fraud in the pauper or his wife, in acquiring or retaining possession; and if we were at liberty to infer fraud, which we are not, there are no premises in the case from which an inference could properly be drawn. The husband comes to the cottage under a claim of right; and, for any thing which appears, he might really believe he had that right. The parish-officers, who alone would gainsay that right, do not gainsay it, nor take any steps to oppose his occupation, but acquiesce in it for a period of more than four years. There is no decision, under circumstances in any respect like the present; for the cases of *Rex* v. *St. Michael's, Bath* (*a*), and *Rex* v. *Catherington* (*b*), were cases where the pauper had nothing in the parish which he had a colour for calling his own; and if not, we must look to the words of the statute, which give the right of removal, that we may see whether this case is within the mischief against which that statute meant to provide. That statute is 13 & 14 *Car. 2. c.* 12.; and it recites, that poor people are not restrained from going from one parish to another; and, therefore, do endeavour to settle themselves where there is the best stock, the largest commons or wastes to build cottages, and the most woods to burn and destroy, and when they have consumed it, then to another parish; and, at last, become rogues and vagabonds; and then it enacts, that the justices may remove such persons to the parish where they were last legally settled, either as a native, householder, sojourner, apprentice, or servant, for the space of 40 days at least. Is, then, this pauper within the words, the spirit, or the mischief of this provision? He comes to *C.*, not for any of the motives this statute meant to repress, but because he has a freehold in the parish; not to prey upon the parish stock, but to live upon that of which he is a freeholder, and as to which he was warranted in concluding that he was entitled to the possession. This is not a case of fraud, nor a case in which the pauper is conscious at the time, that he is taking the possession wrongfully; nor a case in which the person entitled to the possession takes prompt measures to displace him. Leaving such cases to be decided when they may arise, it is sufficient for us to say, that in this case, where there does not appear to have been fraud or consciousness of wrong, and where no measures were taken within the 40 days or afterwards, to dispute the pauper's occupation, we are of opinion, that this residence was sufficient, and that the orders, which proceeded upon the ground that this was not, ought to be quashed. — Both orders quashed.

(a) *Ante*, pl. 629.
(b) *Ante*, pl. 638.

The lord of a manor granted a lease of a cottage for 31 years to A., who resided in it above a year, and died, leaving a widow and three daugh-

659. *Rex* v. *Berkswell*, *E. T.* 4 *G.* 4. 1 *B.* & *C.* 542. — Two justices, by their order, removed *J. Matthews*, his wife and children, from *B.*, to *H. T.* The Sessions, upon appeal, quashed the order, subject, &c. Previous to the residence at *B.* the pauper was settled in *H. T.*, the appellant parish. In the year 1808, a lease for 31 years was granted by the lady of the manor, under the provisions of an inclosure act, to one *H.*, of a cottage situate in *B.* at the annual rent of 1*s.* *H.* was residing in the cottage at the time of the lease, and continued to do so afterwards for

upwards of a year, when he died intestate, leaving a widow and three daughters, one of whom was married to the pauper. Letters of administration were granted to the widow, but no distribution was made of the intestate's effects. After the death of *H.*, his widow lived in the cottage for about two years and upwards. One of the other daughters, with her husband, resided there for two or three years more, and then the pauper and his wife came, and resided there for some years, and until the period of their removal, with the permission of the widow, she occasionally helping them, and always paying the annual rent of 1*s.*, reserved by the lease. The pauper never paid any rent, either to the widow or the lady of the manor. The question for the opinion of this Court was, Whether, by such residence, the pauper gained a settlement in *B.*? — ABBOTT C. J. I am clearly of opinion, that the pauper had not any such interest as would have enabled him to say, "I will come and reside on this property." If the widow of *H.* had refused to let him do so, a court of equity would not have assisted him. The next of kin had not even an equitable interest; but had a mere right to an account, and, perhaps, upon that it might have turned out that the widow had paid debts to a greater amount than the value of the leasehold property in question. The order of Sessions must, therefore, be quashed. — BAYLEY J. The case of *Rex* v. *Toddington* (*a*) is decisive. Lord *Ellenborough's* judgment, there, shows in what cases an equitable interest will give a pauper a right to come and reside upon the property. This clearly is not such a case, even supposing the pauper's wife to have had any equitable interest. — HOLROYD J. concurred. — Order of Sessions quashed. (*b*)

ters. Administration was granted to the widow, but no distribution of the estate was made. After his death, the widow, and, by her permission, one of the daughters and her husband resided in it some years: Held, that the daughter, or her husband in her right, had not any equitable estate in the cottage, and that no settlement was gained by their residence in it.

(*a*) *Ante*, pl. 656.

660. *Rex* v. *Hagworthingham*, *E. T.* 4 *G.* 4. 1 *B.* & *C.* 634. — Upon an appeal against an order of two justices whereby *E. T.* his wife and family, were removed from *S.* to *H.*, the Sessions confirmed the order, subject, &c. In the year 1798 certain commissioners, in pursuance of an act of parliament for the inclosure of the parish of *H.*, made their award, and allotted to the Earl of *M.* as the lord of the manor of *H.* an allotment, as a full compensation for his right and interest in the soil of the open fields and commonable and waste lands within the manor. In the year 1809, one *Goodwyn* applied to Lord *M.* for leave to build a house upon the waste, in the parish of *H.* Lord *M.* gave him liberty, in writing, to build a house on the place in question. *G.* built there, on the waste by the road side, in the same year, a blacksmith's shop, which two years afterwards he sold to one *B.*, who sold it to the pauper for 30*l.* No deed of conveyance was executed to the pauper. The pauper converted the shop into a dwelling-house, where he resided during five years, and then sold it to one *W.* for 34*l.* The pauper continued to live therein as tenant to *W.* for two years longer. During the five years that the pauper resided in the house as owner, he paid 1*s.* a year to Lord *M.*, as lord of the manor. The surveyor of the highways once demanded this 1*s.* to be paid to him, but it was never so paid. On the pauper quitting the house *W.* went to live there, and it is let by *W.* to a tenant for 2*l.* 18*s.* a year at the present time. No adverse claim has ever been made. — ABBOTT C. J. now delivered the judgment of the Court. We have considered of this case, and we are of

A built a house on the waste of a manor, by licence from the lord, resided in it two years, and then sold it to B. The latter sold it to C for 50*l.*, but no conveyance was executed. C resided in it five years, and paid 1*s. per annum* rent to the lord, and then sold his interest. No adverse claim was made: Held, that although C paid a consideration of 90*l.* when he purchased his interest, he did not acquire, by purchase, an interest or

(*b*) See Rex *v.* Widworthy, *ante*, pl. 612. Rex *v.* Standon, *post*, pl. 701.

estate sufficient to confer a settlement within stat. 9 G. 1. c. 7. § 5.

opinion, that the pauper had not gained a settlement in *H.*, and, consequently, that the rule for quashing the orders must be made absolute. In support of the orders it was contended, that this was a settlement obtained by purchase of an estate or interest in the parish, for a consideration of 30*l.* paid. Some discussion arose as to the nature of the estate or interest by the purchase whereof a settlement may be acquired. But we think the enquiry into that point unnecessary in this case; because, upon the facts stated, and on the authority of the case of *Rex* v. *Horndon-on-the-Hill* (*a*), we think there has been no purchase of any estate or interest of which we can take notice. It is stated in the case, that the pauper, after his purchase, paid 1*s.* a year to Lord *M.*, but no such payment appears to have been made, either by *B.*, who sold to the pauper, or by *G.*, who erected the building and sold it to *B.* Therefore, although the pauper might, in consequence of this payment, have acquired the character of a tenant from year to year, yet there is nothing to give that character either to *B.* or *G.*, and the matter purchased by the pauper is the same as in the case referred to. It was there decided, that a licence to occupy does not operate as a grant, nor confer any legal title; and as to equitable right or title, the observations made by Lord *Ellenborough* are unanswerable: "We cannot take into our consider-"ation what it may be conjectured a court of equity would de-"termine in this case. Perhaps a court of equity might inter-"fere, but can we say with certainty that it would? We ought "to see that the party has clearly an equitable interest, and not "merely such a claim as might possibly induce a court of equity "to interpose in some way or other." Upon the ground, therefore, that this was not a purchase of any estate or interest in the land or building, we are of opinion that no settlement was gained. — Order of Sessions quashed.

(*a*) *Ante*, pl. 654.

A written agreement was made for the purchase of an estate, to be paid for by two instalments; the first was to be payable within a few days after the signing of the agreement, and the last after the expiration of seven months. The vendor was to make out a good title on the payment of the last instalment, and to convey the premises; but the purchaser was to be let into possession upon the payment of the first instal-

661. *Rex* v. *Geddington*, *T. T.* 4 *G.* 4. 2 *B.* & *C.* 129. — Upon appeal against an order whereby *G.*, his wife and children, were removed from *Geddington* to *D.*, the Sessions quashed the order, subject, &c. In *November* 1814, the pauper, *G.*, being then resident in the parish of *Geddington*, entered into a written agreement with one *N.*, by which the latter agreed to sell to *G.*, all that messuage, &c. situate at *D.*, therein described, at or for the price of 310*l.*, to be paid as follows: the sum of 160*l.*, on the 30th day of *November* instant, and the sum of 150*l.* on the 24th *June* next, with interest for the same, after the rate of 5*l.* for 100*l.* for a year from the date of the agreement. And *N.* agreed at his costs to make out a good marketable title to the premises, and to convey the same at the costs of *G.* on the 24th *June* next, on payment of 150*l.* with interest. And *G.* agreed with *N.*, to pay to him on the said 30th *November* instant, the said sum of 160*l.*, and also the further sum of 150*l.*, with interest on the said 24th June next, on having the premises thereby agreed to be sold conveyed to him, *G.* And on payment of the sum of 160*l.* *G.* was to be let into the possession of the premises; but in case default should be made by him of payment of the 160*l.*, the agreement was to be void, and *N.* was to be at liberty to sell the premises on the 5th *December* next. The sum of 160*l.* was paid on the day appointed, and full possession then given by *N.*, and the pauper resided in the house in *D.* for a year and a half, and

upwards, immediately subsequent; but he never paid the 150*l.* so agreed to be paid on the 24th *June*, nor was any conveyance ever executed. An action at law was brought by *N.* for the 150*l.*; but afterwards by an agreement between the parties the same was discontinued; *N.* paying the costs and returning to the pauper 30*l.* of the said 160*l.* and the pauper agreeing to give up the contract and the possession, which was accordingly done. — BAYLEY J. In cases relating to the law of settlement, the manner of determining any particular point is not so important, as it is that the decisions should be uniform and consistent. For as that law is admininstered gratuitously by a most respectable and meritorious body of magistrates, whose habits and duties are not likely to make them acquainted with the nice distinctions of the courts of equity, it is desirable that they should have cases settled upon plain grounds for their direction, rather than that they should be called upon to entertain and decide difficult questions of equitable law. The question in this case arises on the 9 *G.* 1. *c.* 7. § 5., by which it is enacted, "that no person shall "be deemed to acquire or gain any settlement in any parish, for or "by virtue of any purchase of any estate or interest in such parish "whereof the consideration for such purchase doth not amount to "the sum of 30*l.*, *bonâ fide* paid." There must, therefore, either be an estate or interest PURCHASED; and by the latter word I understand a definite interest, for which the party contracts at the time of making the contract. If the question raised were *res integra* I should be disposed to hold that the legislature meant a legal interest only. It has been decided, however, that a *cestui que trust* has a sufficient interest in land to gain a settlement under this statute, and I feel bound to adhere to those decisions; but there may be a distinction between an equitable estate and a mere equitable right, and that is adverted to by my brother *Holroyd*, in the case of *Rex* v. *Toddington*. (*a*) The case of *Rex* v. *Long Bennington* (*b*) is expressly in point with the present, and shows, that in cases of constructive trusts, a settlement is not gained by the *cestui que trust*. The agreement there, indeed, was by parole, but that circumstance formed no ingredient in the judgment of the court. The principle of the decision was, that a court of law, perhaps in ignorance of what a court of equity would do under the circumstances, held that it was not the case of a mere naked trustee and a *cestui que trust*; for, until the payment of the full purchase-money, the vendor had a beneficial interest, and was something more than a trustee; and, therefore, that no settlement was gained. There is one distinction between the two cases. In the case cited it does not appear when the residue of the purchase-money was to be paid; whereas in this case part was paid on the 30th *November*, and the residue was to have been paid on the 24th *June*. And it is said, that during the interval the pauper was irremovable; but I think he was not irremovable till the 24th *June*, because it was not his own estate, either at law or in equity, until he paid or tendered the residue of the purchase-money; and that being so, I am of opinion that there was no settlement gained in *D.*, and, therefore, the order of Sessions must be confirmed. — HOLROYD J. I am of opinion that this was not to be considered the estate of the pauper, either in law or equity, so as to give him a settlement under the con-

ment. The purchaser paid the first instalment, and was let into possession, and continued in possession for a year and a half but the last instalment was never paid, nor any conveyance ever executed; and the purchaser afterwards gave up the contract upon receiving back part of the first instalment: Held, that under this contract, the purchaser did not acquire an equitable estate, so as to gain a settlement under the 9 G. 1. c. 7. § 5.

(*a*) *Ante*, pl. 656.

(*b*) A MS. case cited by Mr. J Bailey.

tract which is stated in the case. Whether if the vendee had paid or offered to pay the remainder of the purchase-money, an equitable estate would have been gained, so as to give a settlement, is a very different question. The cases which have been cited show, that where the vendee has performed the contract in part, and has offered to pay the remainder of the purchase-money, the vendor then becomes a trustee for the vendee, and a court of equity will compel a specific performance. The case of *The King* v. *Long Bennington* seems to me to have been properly decided, and to govern the present. There, indeed, the contract was by parole, and it did not appear that the vendee was to have possession for a specific period of time; but these distinctions were not relied upon. Here, time is given till *June*, when the residue of the purchase-money is to be paid; and it is agreed that the vendee should have possession till that time. The effect of which is merely this, that it might or might not amount to a demise for that time; but there is not sufficient found in the case to show that there was a renting of a tenement of 10*l.* annual value. But it is said, that at all events there was a purchase of an interest for six months; it does not, however, appear how much was to be paid for that, or that the pauper, in purchasing that, acquired an interest in land to the value of 30*l.* If the contract was rescinded by the fault of the vendor, it is questionable whether any thing could be recovered for the possession during the six months. For these reasons I think that no settlement was gained in *D.*— BEST J. It has long been settled that an equitable estate will satisfy the words *any estate or interest* in the 9 *G.* 1.; but it must be a clear and absolute equitable estate; such an estate as a court of equity would put the person claiming it into the complete possession of, and protect him against any attempts to disturb his enjoyment of it. A court of equity could not give possession to a purchaser who had not paid the purchase-money, or keep him in possession if he were put in against the legal claim of the vendor. Such a purchaser has only an inchoate right, which is not rendered a perfect equitable estate until he has paid all that he has stipulated to pay. Where purchasers have been ready to pay the price, and tendered it to the vendor, cases have occurred in which very nice questions have arisen, whether they are entitled to a conveyance. The business in which we are occupied in this court does not qualify us for the decision of such points. But if we are incompetent, how much more so must those be who compose the Courts of Quarter Sessions? and these things cannot be submitted to us until they have first been decided upon by them. I say, therefore, with my brother *Bayley* in the case of the *The King* v. *Horndon-on-the-Hill* (*a*), "we cannot "know how a Court of equity will deal with such a case;" and that I do not see that the pauper had any equitable estate; certainly not such a perfect one as confers a settlement.—Order confirmed.

(*a*) *Ante*, pl. 654.

A widow, before assignment of dower, has not such an interest in the land of which she is dowable

662. *Rex* v. *Northweald Bassett*, *E. T.* 5 *G.* 4. 2 *B.* & *C.* 724.—*M. R.*, widow, and her six children, were removed, from *N.* to *M.* Upon appeal, the order was quashed, subject, &c. *R.*, the pauper's husband, died in *May*, 1822, seized of a freehold estate liable to dower in *N.* Dower was not barred, but it has not been assigned, nor have any steps been taken for that purpose.

The heir at law has been from the time of his birth an idiot, and at *R.*'s death was 21 years of age. In the year 1820, long after the marriage of *R.* and *M.* the estate was mortgaged for a term of 1000 years by *R.*, to secure the payment of 100*l.* The mortgagee received from the tenant the full half year's rent, which accrued after the death of *R.* at *Michaelmas* last, out of which he paid the sum of 3*l.* to the pauper *M.*, and took from her the following receipt; "The 7th *December* 1822, received of the heir at law "of my late husband, *R.*, deceased, the sum of 3*l.*, by the payment "of *H.*, (the tenant,) being my third share, as his widow, of the "half year's rent of the freehold part of his estate at *T.* common, "in *N.*, due *Michaelmas* last." *R.* lived in *M.*, and after his death the pauper, his widow, resided in that parish for some months, and then hired and lived in a cottage in *N.*, which was not on the husband's estate. Before her residence of 40 days had been completed in that parish, she became chargeable, and was removed. — ABBOTT C. J. The case of *Rex* v. *Painswick* (*a*) was stronger in favour of the settlement claimed than the present case: for there the pauper had actually resided upon the property, out of which the claim to a settlement arose. I think it is our safest course to abide by that decision. If we consider the nature of the widow's right to dower before assignment, it will be seen that she had not any right either legal or equitable to the land. Her legal right was to have dower assigned, her equitable right to have an account of the rents and profits. But in *Rex* v. *Berkswell* (*b*), a right of that nature was held insufficient to confer a settlement. Upon the authority of those two cases, but particularly the former, that being a case of dower, I am of opinion that the widow of *R.* had not any right to reside in the parish of *N.*, and that the order of Sessions must be quashed. — Order of Sessions quashed.

as to be irremovable from the parish in which the land lies.

(*a*) *Ante*, pl. 627.

(*b*) *Ante*, pl. 659.

663. *Rex* v. *Llantillio Grossenny*, *E. T.* 7 *G.* 4. 5 *B.* & *C.* 461. — Upon an appeal against an order, whereby *W. E.*, his wife, and children, were removed from *St. P.* to *L.*, the Court of Quarter Sessions confirmed the order, subject, &c. *W. E.* was born in the parish of *L.*, and he also gained a settlement in the parish by hiring and service. The parish of *L.* relied on shewing a subsequent settlement in a third parish, namely, *S.* In 1816 the pauper made a parol agreement with one *C.*, for the purchase of a cottage and garden, in the parish of *S.*, for the sum of 40*l.* Under this contract he took possession, and paid *C.* 30*l.* on account; no conveyance was ever executed. After the pauper had been in possession 12 months, living and sleeping in it with his wife and children, he sold the property for 40*l.* to *W.*, to whom he gave up possession, and afterwards paid the remaining 10*l.* to *C.* The pauper never was in possession of the premises after he had paid the whole of the purchase money. *W.* is now in possession of the cottage and garden. The question for the opinion of this Court was, Whether the pauper gained a settlement in *S.*? — BAYLEY J. It is very desirable to adhere to the language of the act of parliament, and to the construction put upon that language in decided cases. The statute 9 *G.* 1. *c.* 7. *s.* 5. enacts, "That no person shall "be deemed to acquire or gain any settlement in any parish for or "by virtue of any purchase of any estate, or interest in such "parish, whereof the consideration of such purchase doth not

A made a parol agreement with B, for the purchase of a cottage and garden for 40*l.* A took possession, and paid 30*l.* on account, and resided on the premises. No conveyance was executed. After A had been in possession 12 months, he sold the property for 40*l.* to C, to whom he gave up possession. A afterwards paid the remainder of the purchase-money to B: Held, that A did not gain any settlement

by the purchase of any estate or interest within the stat. 9 G. 1. c. 7. § 5.

(b) *Ante*, pl. 661.

" amount to the sum of 30*l. bonâ fide* paid." There must, therefore, be a purchase of an estate or interest, and by the latter word must be understood some specific definite interest, and the party contracting must become the purchaser. *Rex* v. *Long Benningtón* (*a*) and *Rex* v. *Geddington* (*b*) establish, that, although an equitable estate is sufficient to give a settlement, still the purchase must be completed: and that if it be not an estate, but an equitable right only, no settlement is gained. The principle deducible from those cases is, that the relation of trustee and *cestui que trust* must be created in order to give a settlement by the purchase. In *Rex* v. *Geddington* the agreement was to purchase an estate for 310*l.*, of which 160*l.* was to be paid on the 30th *November*, and 150*l.* on the 24th *June* then next. The latter sum was never paid; the pauper resided a year and a half, and afterwards the contract was rescinded. There, by paying 150*l.*, a perfect equitable estate would have been acquired; but it was never paid, and, therefore, the pauper was held never to have had a perfect equitable estate. Here the pauper had paid 30*l.*, and by paying 10*l.* more, he would have performed all he was bound to do, and would have acquired a perfect equitable estate. During the whole time the pauper was in possession, in this case, he might have been removed. He never was the purchaser of an estate or definite interest. It has been ingeniously argued that the payment of the 10*l.* would have given the purchaser a right to demand a conveyance, and that as it might have been made at any time, the payment, when made, related back to the time when the occupation began; and, therefore, that the estate by relation was the estate of the purchaser from the time when his occupation commenced. I think, however, that for the purpose of gaining a settlement, such a payment did not give him the estate *ab initio*, but only from the time when the payment was actually made. The expression of my brother *Holroyd*, in *Rex* v. *Geddington*, as to the vendee having acquired a settlement by having paid or offered to pay the remainder of the purchase money, must be understood in that sense.—HOLROYD J. I think there is no distinction between the cases of *Rex* v. *Bennington* and *Rex* v. *Geddington* and the present case. The pauper in this case never was in possession of the estate after he had paid the 10*l.* He, therefore, never came to settle upon his own estate. A tender of the purchase money, perhaps, might have been equivalent to payment, on the principle that an offer to perform is equivalent to actual performance; but then, in that case, in order to give a settlement, the purchaser at the time of the tender must have had a right to continue to hold the premises. Here, at the time when the payment of the residue was made, the purchaser had no right to hold the possession of the premises.—LITTLEDALE J. concurred.—Order of Sessions confirmed.

III. *Of the Value of the Estate.*

The purchase of a copyhold estate, which, with the fine and fees thereon, amount to

664. *St. Paul's Waldon* v. *Kempton*, *E. T.* 13 *G.* 1. *Foley*, 238. —*A.* purchased a copyhold tenement in *St. P.'s*, which, with the fine and fees paid to the Court, amounted to 30*l.*; and the officers of the parish of *K.* gave him 2*l.* towards paying his fine and fees: it was insisted that this was fraudulent, and not a good

(*a*) A MS. case referred to by Mr. J. Bailey, 2 B. & C. 132.

purchase within the statute of 9 *G.* 1. sufficient to gain a settlement. — THE WHOLE COURT said, that they could not take notice of its being fraudulent, unless the justices had adjudged it so.

30*l.* is sufficient for the purposes of settlement, unless it be found to be a fraudulent purchase.

665. *Rex* v. *St. Mary, Whitechapel, T. T.* 8 & 9 *G.* 2. *Burr. S. C.* 55. — The pauper having a leasehold of 5*l. per annum* value in *M.*, for the term of 50 years, for which he paid only 6*d. per annum* reserved rent, he went and lived there upon it, and was a housekeeper 25 years, and then sold the remainder of his term, and all his interest therein, for 32*l.* — THE COURT held this to be a very plain case, and that the settlement of the pauper was at *M.*, for that the selling the leasehold made no difference.

A lease of 50 years, of a cottage worth 5*l.* a year, at 6*d.* a year rent, upon which the purchaser resides for 25 years, and then sells the remainder of the term for 32*l.* is an estate of sufficient value to gain a settlement.

666. *Rex* v. *Tedford, T. T.* 8 & 9 *G.* 2. *Burr. S. C.* 57. — *G.* was settled at *T.*, and contracted with *A.* for a house and curtilage in *W.* for 39*l.* which was conveyed to *G.* and his heirs accordingly, in consideration of 39*l.* *G.* paid 9*l.* and *B.* paid the remaining 30*l.* to *A.*, by *G.*'s order. The conveyance was dated 2d *May* 1730, but was not executed till the 19th of *May* 1730. Upon the 18th of *June* 1730 *G.* mortgaged the premises to *B.* by demise for 1000 years, under a proviso to be void on payment of the money in a year. *G.* continued in possession about four years after the mortgage; and then *B.* entered, by virtue of the said mortgage and a release of the equity of redemption. *G.* being thus out of possession, was removed to *T.* — LORD HARDWICKE: This is a new case. The question is, Whether it is within 9 *G.* 1. *c.* 7.? and it does not appear to me to be within this act. The act says, that "none shall gain a settlement by virtue of any purchase, "whereof the consideration doth not amount to the sum of 30*l.* "*bonâ fide* paid, for any longer term than he shall inhabit in such "estate:" so that it is confined to purchases under 30*l. bonâ fide* paid; consequently, if the vendor had such consideration of 30*l. bonâ fide* paid to him, it is not within this act. Now in the present case the consideration was 39*l.*, and was *bonâ fide* paid to the vendor; and it would be pretty hard to say that the justices had a power upon this act to inquire whether the purchaser borrowed the money or not. It is a common case to borrow money to make purchases; nothing is more frequent than borrowing a sum to make up the price. — The other Judges concurred.

If a man purchase a house and curtilage for 39*l.*, but pay only 9*l.* himself, the remainder being paid for him by a friend, to whom he mortgaged the premises, as a security, and who, after the expiration of four years, entered under his mortgage, and turned out the purchaser; yet this is a purchase of 30*l.*, and will gain a settlement.

667. *Rex* v. *Stockland, H. T.* 15 *G.* 2. *Burr. S. C.* 169. — *Spiller*, the pauper, was settled in *S.* *Salter*, of *C.*, being possessed of a house, orchard, and garden, containing an acre, in *C.*, for the residue of a term of years determinable on three lives, which cost 40*l.*, by indenture mortgaged the house and premises to *Spiller*, during the residue of the term; subject to redemption on payment of 15*l.* with lawful interest on a day therein mentioned, and passed in the lifetime of *Salter*. *Salter* afterwards died intestate; at the time of whose death one of such lives was dead; and there was then due on such mortgage the principal sum of 15*l.*, and 1*l.* 10*s.* for two years' interest thereof. The mortgage-monies being then not paid, and *Salter* being also indebted to *Spiller*, by bond and simple contract, in the sum of 18*l.* 10*s.*, making in all 35*l.*, *Spiller* agreed with the widow of *Salter*, that in case she would renounce the administration, she should have

The mortgagee of a term for 15*l.*, to whom 30*s.* were due for interest, and 18*l.* 10*s.* more by bond and simple contract, who, on the death of the mortgagor, takes out administration as a principal creditor, and thereby enters, and becomes possessed of the

estate, gains a settlement by a residence therein of 40 days. Str. 1162.

the household goods; which was done accordingly: and on her renunciation, *Spiller* took letters of administration, as principal creditor, to *Salter*, and thereupon entered upon such house, orchard, and premises, (which were then appraised at 25*l.*,) and possessed himself thereof, and also of a cyder-wring, appraised at 2*l.* The rest of the effects, which were appraised at 1*l.*, he permitted the widow to keep and retain to her own house, pursuant to such agreement. *Spiller* then removed into the parish of *C.*, and settled in the house and premises, and was offered 30*l.* for the same, and continued to dwell therein eight years, when the estate determined; nevertheless, he continued in the house till he was removed. — THE COURT were unanimous that he was legally settled in *C.* The consideration he has *bonâ fide* paid exceeds the sum of 30*l.*, and he remained upon the estate, irremovable, 40 days. It is clearly within the words of the act.

The sum given for an estate is the true *criterion* of its value, and if that be under 30*l.*, no settlement can be gained in respect of *subsequent improvements.* S. C. Black. Rep. 596. 598.

668. *Rex* v. *Dunchurch*, *H. T.* 6 *G.* 3. *Burr. S. C.* 553. — *T.* was duly certificated from *D.* to *S.*, where he resided with his wife and family to the time of his death. Upon the trial of this appeal, it appeared by parol evidence of the pauper and her son only, that about 25 years since, the pauper and her husband, the said *T.*, were joint purchasers of a house, yard, and garden-place, at *S.*, and paid for the purchase thereof 19*l.* and upwards; and *T.* laid out about 15*l.* more to put it in repair, and built a new shop on part of the premises, and was taxed after the rate of a tenement of 30*l.* value for the first two years after he bought it, and resided in the purchased premises till the time of his death. After *T.*'s death, his widow, the pauper, continued in possession of the house and premises for about 10 months, and then went to service for about five years; and during that time she let the premises to her son *E.* for 1*l.* a year, but declared she could have let it for 1*l.* 10*s.* a year, or more, to other persons. The pauper, when she left her service, which was about three years ago, returned to her house at *S.*, and soon after sold the garden-place for 20*l.* 3*s.* 6*d.*; and about the same time, by deed of gift, gave to her son *W.* part of the yard, being 10 yards in length, and six in breadth, for him to build a house upon. It also appeared by indenture of feoffment, dated the 8th of *November* 1763, (which indenture was produced and approved,) that the pauper, in consideration of natural love and affection, and of 10*l.*, granted the residue of the said premises to her son *E.* and his heirs, to the uses following; *viz.* as to the parlour, chamber over it, and the pantry, part of the premises, to the use of the pauper for her life, *sans* waste; remainder to *E.* in fee; and as to the residue of the premises, to the use of the said *E.* in fee; and *E.* covenanted to keep the whole of the premises in repair. It also appeared by parol evidence that the pauper continued to dwell in that part of the house which was so limited to her for her life, till she applied to the parish-officers for relief; and being told by a justice that she could not be removed from that parish to *D.*, whilst she continued to live on her own freehold, she thereupon went out of her own house, for a little time before she was removed, and went to her daughter's house, which is in the same parish, and let her house to her son for 6*d.*, and was relieved at her daughter's house, by the parish-officers, about a week, and then removed from thence, by order of two justices, to *D.*, as the place of her last legal settlement, notwithstanding she

then was, as aforesaid, entitled for her life to the premises she went out of, in order to her being relieved and removed by order to the parish of *D.* — LORD MANSFIELD: The whole question is, Whether this woman was a *bonâ fide* purchaser of an estate of 30*l.* value? She cannot be presumed to come to it by descent or executorship, or any such like act of law, because the contrary appears; and a presumption only stands till the contrary be proved. The case of *Rex* v. *Benjoe* (*a*) was adjourned, and no determination appears on the record in the office, and therefore that case is no authority. I cannot think the act of 9 *G.* 1. can be construed in the manner that it has been now attempted; it draws the line according to the purchase-money: the letting in any thing that is subsequent would overturn the whole act; the act takes the value of the purchase from the purchase-money actually paid. In the *Tedford* case, of the mortgage-money, it was, in fact, a purchase of an estate of the value of 39*l.*, though the purchaser might borrow part of the money, upon mortgage, to pay for it. — WILMOT J. Here the husband and wife appear to have been joint-purchasers 25 years ago; they took jointly, and by entirety, not by moieties: if so, she can only stand in the same situation as her husband did, which is that of a purchaser. No money afterwards laid out can make the prior purchase to have been of a greater value than it really was at the time of making it. Before 9 *G.* 1. people purchased small interests, and they purchased collusively. To obviate these two inconveniences, the act makes the criterion to be 30*l.* *bonâ fide* given, be the real value more or less; surely, subsequent improvements cannot be considered with a retrospect. As to removing a person from their own, she became an object of removal as soon as she had let it to her son; therefore this case is not like that of *Sowton* and *Sydbury* (*b*), where the man all along resided at the public-house. I am of opinion that she gained no settlement under this freehold. — YATES J. We must take the whole case together; and from that it appears, that this was a joint purchase by husband and wife, and therefore we must consider her as a purchaser. The act of 9 *G.* 1. is as plain and clear as possible, that it must be a purchase of 30*l.* value at the time of the purchase; and as the statute has made this criterion, we have no authority, nor is there any reason for us to depart from it. — ASTON J. declared his concurrence. — Whereupon THE COURT unanimously declared the order of the two justices removing the pauper from *S.* to *D.*, and the order of Sessions, confirming the same, to be affirmed.

(*b*) *Post*, pl. 675.

669. *Rex* v. *Mattingly* (*c*), *T. T.* 27 *G.* 3. 2 *T. R.* 12. — On the 18th of *June* 1769, the pauper, *W. W.*, the husband of *Elizabeth*, and the father of *Daniel*, mentioned in the order of removal, came into the parish of *M.*, with a certificate of that date acknowledging

Where A. contracted for the purchase of a copyhold estate for 39*l.*, mort-

(*a*) The case of Rex *v.* Benjoe was thus: The father of the pauper purchased an acre of freehold land in *Benjoe*, and paid 25*l.* for the purchase. He built a house on it for his own habitation, on which he laid out a considerable sum of money, and then sold the house and land for 150*l.*; but he was never rated to the taxes for the nine months he lived there. — The Court said, that when he had bought the land, and laid out the money in improving its value to more than 30*l.*, he was to be considered as a purchaser within the statute to that value, and that his residence thereon had gained him a settlement in *Benjoe*.

(*c*) And see Rex *v.* Olney, *post*, pl. 672.

gaged to another person for 32*l.*, and paid 7*l.*, and was admitted to the estate subject to the mortgage, he did not gain a settlement by it under 9 G. 1. c. 7.

them to be settled in the parish of *H.* They continued to live in the parish of *M.* until the time of the order of removal. Whilst they continued so to reside, and a short time previous to the 3d *August* 1780, *W.* contracted with *I.* for the purchase of a copyhold tenement, with the appurtenances, situate in *M.*, which copyhold tenement, with the appurtenances, had been, previous to such contract, mortgaged to one *T. B.* for the sum of 32*l.*, and lawful interest, which mortgage-money was unpaid at the time of such contract. The contract between *W.* and *I.* was, that *W.* should pay the sum of 39*l.* 17*s.* 6*d.* for the tenement, with the appurtenances, which last-mentioned sum was inclusive of the said sum of 32*l.* so due to the mortgagee. In pursuance of such contract, *W.* paid *I.* the sum of 7*l.* 17*s.* 6*d.*, which, with the sum of 32*l.* to be paid to *T. B.* by the pauper, made the aforesaid sum of 39*l.* 17*s.* 6*d.* On the 3d of *August* 1780, *W.* was duly admitted to the premises (*prout* the admission, wherein it appeared that the lord granted the estate on the surrender of *I.* to *W.*, subject to a mortgage surrender for securing 30*l.* and interest), and afterwards entered into possession of the premises, and continued possessed thereof for four years, and during such time paid *T. B.* two years' interest of the said sum so due on the mortgage, which was all the interest *T. B.* received on the 32*l.* after the time of the purchase. He never paid off the mortgage-money, and some time in the year 1784, he delivered up the possession of the premises to the said *T. B.*, the mortgagee. — ASHHURST J. The only question in this case is, Whether the purchase made by the pauper is, in fact, of the value of 30*l.*? Taking all the facts disclosed by this special case into consideration, I am clearly of opinion, that it was not a purchase for 30*l.*, but only for 7*l.* 17*s.* 6*d.*, for the pauper only purchased the interest of the mortgagor subject to the mortgage. Now the estate was mortgaged for 32*l.*, therefore the mortgagor's interest subject to that was only 7*l.* 17*s.* 6*d.*, which was the whole of the pauper's purchase. The estate having been mortgaged for 32*l.*, the instant the mortgagee got into possession he might have gained a settlement upon it; if so the mortgagee was a purchaser for 32*l.* and the pauper only purchased subject to that charge. In the *Tedford* case, it was only decided, that if a man purchase an estate for 30*l.* *bonâ fide* paid, the Court will not inquire how the purchaser came by the money; but here the purchaser did not *bonâ fide* pay 30*l.*, and that circumstance distinguishes this case from that of *Rex* v. *Tedford*. (a) If the pauper, previous to the contract for the purchase, had given the mortgagee a personal security for the mortgage-money, then he would, in fact, have bought an estate for 30*l.*, though part of the purchase-money would have been borrowed on mortgage; then the words of the statute would have been satisfied, and the pauper would, consequently, have gained a settlement in the parish of *M.* — GROSE J. This case depends upon the construction of the statute of 9 *G.* 1. *c.* 7. Now it is to be observed, that that statute does not give a settlement to a man purchasing an estate of the value of 30*l.*, but it enacts, "that no "person shall be deemed to acquire a settlement in any parish by "virtue of any purchase of any estate in such parish, whereof "the consideration for such purchase doth not amount to the sum "of 30*l.* *bonâ fide* paid, for any time longer than he shall inhabit

(a) *Ante*, pl. 666.

"in such parish." Then the question here is, Whether the pauper has *bonâ fide* paid 30*l.* for the purchase of this estate? Now, it is not even pretended that the sum of 30*l.* has been paid at all, but, on the contrary, it appears on the case, that no more than 7*l.* 17*s.* 6*d.* has, in point of fact, been paid. Then it has been argued, that if the vendor has been satisfied 30*l.* for the sale of his estate, it is a purchase within the statute 9 *G.* 1. But that is not the true construction of the act; for the question must be, Whether the purchaser is able to pay, or has *bonâ fide* paid 30*l.*? I agree, that if he has *bonâ fide* paid the purchase-money, we will not inquire how he gained it, nor whether he mortgaged the estate for the payment of it. That might be a question of fraud for the consideration of the justices at the Sessions; and if it appeared to be a fraudulent purchase, no settlement could be acquired by it. In the case of *Rex* v. *Tedford*, there was a purchase for 39*l.*; the purchase-money was, in fact, paid, and it was the money of the pauper, though part of it was borrowed on a mortgage of the very estate which he purchased; and that was properly holden to be a *bonâ fide* purchase of an estate for 30*l.* But here it cannot be contended that the pauper gained a settlement in the parish of *M.* by virtue of a purchase for 30*l.*, when, in point of fact, that sum has not been paid. In order to constitute a purchase within the 9 *G.* 1. the sum of 30*l.* must not only be paid in point of fact, but it must be *bonâ fide* paid.

670. *Rex* v. *Scammonden*, *M. T.* 30 *G.* 3. 3 *T. R.* 474. — The pauper being legally settled in *S.*, entered into an agreement with one *H.* for the purchase of an estate in *R.* for 28*l.*, and the consideration mentioned in the deeds, and in the receipt indorsed, was 28*l.*; but the appellants produced parol evidence to prove that, before the deeds were executed, the vendor declared that as the agreement was not in writing he was not bound by it, and having since had 30*l.* offered for the estate, he would not take less, nor would he execute the deeds unless the purchase-money were made up that sum. Upon which the pauper advanced 1*l.* 15*s.* more, which, with 5*s.* owing from *H.* to the pauper, was insisted made up the sum of 30*l.*; but the deeds were not altered, and the consideration therein mentioned was left according to the original agreement, viz. 28*l.* The counsel for the appellants contended that this was a *bonâ fide* purchase for 30*l.* But the Court were of opinion, that no parol evidence could be given to contradict the consideration mentioned in the deeds. The estate purchased was the estate of *H.*'s wife; and in the deed there was a covenant from *H.*, that he and his wife would levy a fine unto *B.* in fee, of the premises at the cost of *B.*; towards the expence of which fine *B.* left in the hands of his attorney 4*l.* 4*s.* The pauper resided above three months upon the premises, and afterwards sold them to his brother, *J. B.* To this conveyance *H.* and his wife were parties; and it recited *H.*'s covenant in the former deed to levy a fine; but as such a fine had not then been levied, it was agreed that instead thereof *H.* and his wife should acknowledge and levy a fine of the premises unto *B.* in fee, which fine was, in *H. T.* 1787, levied accordingly; part of the expence of levying it was discharged by the 4*l.* 4*s.*, so left in the hands of the attorney by the pauper, and the other part was paid by *B.* — LORD KENYON C. J. said, it was clear that the party might prove other consider-

The consideration expressed in the deed of conveyance, was 28*l.*, but parol evidence was admitted to prove that 30*l.* was the real consideration.

ations than those expressed in the deed. It is permitted in all cases of covenants to stand seised to uses. And in *Filmer* v. *Gott* (*a*), where the considerations mentioned in the deed were 10,000*l.* *and natural love and affection*, the lords commissioners of the great seal directed an issue to try, Whether natural love and affection formed any part of the consideration, the estates being worth near 30,000*l.*? On an appeal to THE HOUSE OF LORDS this was confirmed; and the jury, on the trial of the issue, finding that *natural love and affection constituted no part of the consideration*, the deed was afterwards set aside by the LORD CHANCELLOR.

(*a*) Brown's Parliamentary Cases, vol. vii. p.70.

If A agrees to purchase a copyhold estate of B for 60*l.*, which was then mortgaged to C for 50*l.*, and pay the 10*l.*, and is admitted, subject to the mortgage interest in C, and afterward borrow 50*l.* of D to pay off the mortgage, and then mortgage it to D for the 50*l.*, he gains a settlement by residing 40 days thereon.

671. *Rex* v. *Chailey*, *T. T.* 36 *G.* 3. 6 *T. R.* 755. — In the month of *November* 1786, the pauper agreed to purchase of *H.* a copyhold messuage in *C.*, which *H.* had before mortgaged to *R. C.*, to secure the sum of 50*l.*, and to pay for the interest of *H.* therein the sum of 10*l.*; and in pursuance of that agreement, the pauper paid the sum of 10*l.* to *H.*, who, on the 4th of *November* 1786, surrendered the said copyhold premises to the pauper, subject to the conditional surrender which had before been made by *H.* for securing the 50*l.* to *C.* In *May* 1790, the pauper agreed with *J. H.* to borrow of him the sum of 50*l.* on the security of the said copyhold estate, in order to pay off the mortgage to *C.*; and on the 8th day of *May* the conditional surrender of the premises to *C.* was duly discharged in the court-rolls by a warrant under the hand of *C.*, acknowledging that he had received of the pauper the sum of 50*l.*, and all interest due thereon. On the said 8th day of *May* the pauper made a conditional surrender of the premises to *J. H.* for securing the repayment of the sum of 50*l.*, which *J. H.* advanced pursuant to his agreement to discharge the mortgage to *C.* On the 4th of *November* 1795, the pauper sold the said copyhold estate for 80*l.*, being 30*l.* beyond the amount of the mortgage, to which it remained subject. The pauper resided in the cottage from the time of his purchase until the resale. — LORD KENYON C. J. I am not able to distinguish this case from that of *Rex* v. *Tedford*. (*a*) By the statute 9 *G.* 1. *c.* 7., no settlement can be gained by residing on an estate that is purchased for less than 30*l.* But it was decided in that case, that though the party cannot pay the purchase-money out of his own funds, if he can borrow it on credit, that is sufficient to satisfy the words of the act of parliament. It has been argued, that this was only an assignment of the original mortgage from the first to the second mortgagee, and that the mortgage interest never was in the pauper; and to be sure if that interest never were in the pauper, it would be difficult to say that it conferred a settlement on him. Then it was said that though the mortgage interest did pass through the pauper, it was merely the mode of transferring a copyhold interest from one person to another, and that this interest did not vest in the pauper. But the latter part of the proposition is not true; the estate did not pass immediately from the first to the second mortgagee; there was an interval, though a short one, in which the estate was vested in the pauper, and he conveyed it to the second mortgagee. An attempt, however, was made to distinguish this case from that of *Rex* v. *Tedford*, by saying, that there the legal estate was in the pauper for a longer period than in the present case; but that cannot furnish

(*a*) *Ante*, pl 666.

any real ground of distinction. If this had been a freehold estate, every judgment signed against the pauper, and properly docketed, would have attached on this estate. Although, when I first read this case, I hesitated whether this could confer a settlement on the pauper; yet, on consideration, I think it is more safe to support the decision in *Rex* v. *Tedford*, from which I think this cannot fairly be distinguished, and which has been adopted in subsequent cases, than to introduce nice and artificial distinctions.

672. *Rex* v. *Olney*, *E. T.* 53 *G.* 3. 1 *M.* & *S.* 387. — Removal from *O.* to *B.* — Order quashed, subject, &c. — The pauper being certificated from *B.* to *O.*, in *September* 1800, and some time prior to the execution of the deed of feoffment hereinafter mentioned, agreed with *M. H.* that he, the pauper, would purchase a messuage belonging to *H.*, situate in *O.*, at the sum of 52*l.*, if *H.* would allow 40*l.*, part of the said 52*l.*, to remain upon mortgage. To this *H.* consented, and in pursuance thereof, by a deed of feoffment, (bearing date the 8th of *October* 1800,) *H.* in consideration of the sum of 52*l.*, therein mentioned to be paid by the pauper, conveyed to him (the pauper) in fee the said messuage; and upon the deed of feoffment, there was indorsed a receipt for the consideration money of 52*l.*, but, in fact, only 12*l.* were paid to *H.*, and the remaining sum of 40*l.* was secured to him by deed of mortgage, bearing date the 9th of *October* 1800: by which said deed of mortgage the pauper, pursuant to the agreement before mentioned, demised the said messuage to *H.* for a term of 1000 years, in consideration of the sum of 40*l.* therein mentioned to have been paid by *H.* to the pauper; and there was a proviso for the deed's becoming void upon payment by the pauper, his heirs, &c. to *H.* of the sum of 40*l.*, with lawful interest, upon the 9th of *April* then next ensuing. The feoffment and deed of mortgage were both executed at the same time, and remained, together with the title deeds, in the custody of *H.* The pauper immediately entered into possession of the messuage, and continued to reside therein, and paid the interest upon the said sum of 40*l.* to *H.*, until the execution of the deeds hereinafter mentioned; but during such time never had the ability to pay off the principal. About a month before the 12th of *June* 1812, the pauper agreed with *T. B.* to sell to him the said messuage, in consideration of the sum of 60*l.*, and soon afterwards *B.* paid to *H.* the sum of 40*l.* in discharge of his mortgage, and in part of his (*B.*) purchase money, and received from *H.* the title deeds, together with the deeds of feoffment and mortgage, which *H.* had never delivered up to the pauper. Afterwards by indorsement on the said indenture of mortgage, bearing date the 12th of *June* 1812: *H.* in consideration of 40*l.* to him therein mentioned to be paid by the pauper, assigned the term of 1000 years to the pauper, and by deeds of lease and release, dated respectively the 12th and 13th of *June* 1812, the pauper conveyed the messuage to *B.* in fee for the consideration sum of 60*l.*; and 20*l.*, being the balance of the purchase money, were then paid by *B.* to the pauper. The indorsement and indentures of lease and release were all executed at the same time. The question for the opinion of the Court is, Whether the pauper gained a settlement in *O.* by the purchase of the above estate and residence thereon? — In support of the order of Sessions, *Best* cited *Rex* v. *Tedford* (*a*), and *Rex* v. *Chailey* (*b*), and argued, that although in the latter

Where the pauper purchased a tenement for more than 30*l.*, but paid down less than 30*l.*, the residue of the purchase-money remaining upon mortgage of the premises, and after residing upon such tenement for more than 40 days, sold the same to another person, who, on the completion of the purchase, paid the sum due on the mortgage to the original vendor, and the residue of the purchase-money to the pauper; at which time the pauper quitted the tenement, not having resided on it 40 days after the payment of such mortgage to the original vendor: Held, that the pauper did not gain a settlement by residing on such estate.

(*a*) *Ante*, pl. 666.
(*b*) *Ante*, pl. 671.

case the money was paid immediately, and here until some years after the purchase, yet that when the money was ultimately discharged on *June* 12, 1812, it became a *bonâ fide* payment of the whole sum. — (BAYLEY J. The pauper did not reside 40 days after that time.) — GROSE J. The question is, Whether this was a purchase for the sum of 30*l.* *bonâ fide* paid, so as to satisfy the statute 9 *G.* 1., where the purchase was contracted for upon security to be given for part of the purchase money, and such part never paid by the purchaser? The case in substance states, that the premises were mortgaged for 40*l.* of the purchase money, and that that money was not paid. But I think that the consideration must be *bonâ fide* paid at the time of the purchase, in order to satisfy the statute. Then it is clear that this was not a purchase of an estate for 30*l.* paid at the time; the consideration money having remained upon security. — LE BLANC J. The statute 9 *G.* 1. enacts, "that no person shall gain a settlement by virtue "of any purchase of any estate, whereof the consideration doth "not amount to 30*l.* *bonâ fide* paid." The question arises on the purchase. The purchase-money amounted to 52*l.*, of which 12*l.* only were paid at the time, the rest was left on mortgage to the vendor. That circumstance distinguishes it from the cases cited, where the party purchasing paid the whole money to the vendor, by borrowing a part *aliunde;* so that there he had credit to borrow of others. But in *Rex* v. *Mattingly* (*a*), which has not been cited, it was held, where the purchaser contracted for the purchase of a copyhold estate for 39*l.*, which was mortgaged for 32*l.*, and paid only 7*l.*, and was admitted subject to the mortgage, that it was not a purchase for 30*l.* *bonâ fide* paid, so as to take it out of the statute. That is a direct authority on this part of the case. But it has been argued upon a supposed difference, inasmuch as the money was ultimately paid in the subsequent transaction with *B.* But how does that stand? All that was done by *B.*, when he became the purchaser of the estate was, to pay off the incumbrance, in order to get the title deeds into his hands, which had passed from the original seller into the hands of the pauper. That was a payment, therefore, made by *B.* for his own benefit, and not on behalf of the pauper. — BAYLEY J. concurred. — Order of Sessions quashed.

(*a*) *Ante*, pl. 669.

IV. *Of the Residence necessary.*

Living in a parish where one has land, gains a settlement.

S. C. 5 Mod. 418. S. C. 2 Salk. 524.

673. *Ryslip* v. *Harrow*, *H. T.* 8 *W.* 3. *Sett. & Rem.* 244. — PER HOLT C. J. Having land in a parish will not make a settlement, but living in a parish where one has land will gain a settlement without notice; for the act of parliament never meant to banish men from the enjoyment of their own lands, and the law takes notice of freeholders, as those that choose members of parliament, and are jurors. Also boarding as a scholar gains no settlement, no more than being nursed in a parish.

The acquisition of an estate, without a residence of 40 days, will not gain a settlement.

674. *Wookey* v. *Hinton Blewet*, *M. T.* 8 *G.* 1. *Str.* 476. — A person settled at *H.* had an estate descended to him in *W.*, w[illegible] upon the justices sent him thither as to the place of h[illegible] settlement. — ET PER CURIAM: The order must be quashed, for it is no settlement nor inhabitation; though if he should go thither he could not be removed: it may be a great injury to send him

away from a good trade in *H.* to perhaps half an acre of land wherein he has but a term.

675. *Rex* v. *Sowton*, *H. T.* 12 *G.* 2. *Burr. S. C.* 125. — The pauper having gained a settlement in *Sowton*, but being much distressed in his circumstances, and having an estate of his own in *Sydbury*, in the possession of one *G.*, as tenant to him, he left his children at a public-house in *Sowton*, and went into the parish of *Sydbury*, and, in consideration of 8*l.* paid him by his said tenant, accepted a surrender of the said term, and had possession of the premises in *Sydbury* delivered to him, and the keys of the house thereof. From the time of his so going into the parish of *Sydbury*, he lodged at a public-house there, about half a mile distant from the premises, and there tarried for about the space of five weeks, and at that time looked after his estate, and employed workmen to make the hedges and cut wood thereon, and sold the same, and employed persons to weed some turnips; and went from the parish of *Sydbury* to the parish of *Sowton* to see his children, and tarried there about a week; and went again to the parish of *Sydbury*, and lodged at the public-house, and looked after his estate, and managed the same as aforesaid, and frequently went into the parish of *Sowton* to see his children, and to other parishes to see his friends, and as his business and occasions required. He was in the parish of *Sydbury*, lodging as aforesaid, from the 2d of *November* till some time in *April* following, and took the same for his home or habitation, apprehending he had no other. Some time in the month of *April* he conveyed away his estate and interest in the premises and came back to *Sowton*. He was in *Sydbury* more than 40 days in the whole, but did not tarry, nor was there 40 days successively, or at any one time, but was as long time absent, in the time aforesaid, from the parish of *Sydbury*, as he was there. He had no bedding or any household goods in the house on the premises, nor any stock thereon, nor paid any taxes or rates within that time; and whilst he was in the parish of *Sydbury*, he always lodged at the public-house as a guest or traveller, having made no agreement for his diet or lodging; and he sometimes eat with the family, but generally provided his own meat, and paid only for his drink as other guests, the master of the public-house not expecting any thing for his lodging, and for what he ate with the family; and there was no particular room or bed in the public-house kept, or agreed to be kept for him; but he lodged sometimes in one bed and sometimes in another in the house, as best suited the convenience of the family, and according as they had other guests. — LEE C. J. A residence in any place for 40 days, being irremovable from thence, gains a settlement, as settled in *Harrow* v. *Edgeware*. (*a*) There is sufficient stated here to show that he had quitted the other place, and come to *Sydbury* to make it his home and habitation: and by the old law a man after three days was looked upon as an inhabitant; the first day he was a stranger, the second a guest, the third an inhabitant. It makes no difference whether he was at his own house, or at another person's, or at an ale-house; he was 40 days in an irremovable state, in *Sydbury*. The only question is, Whether he gained a settlement in *Sydbury*? for if he did, his losing his former settlement in *Sowton* is consequential upon it, and follows of course. Upon the whole, I

The residence need not be upon the estate; for if the owner reside within the same parish, he will thereby gain a settlement.

2 Sess. Cas. 150. 19 Viner, 374. Str. 579. Dougl. 633. S. C. cit. 1 Forst. MS. 212.

(*a*) *Ante*, pl. 608.

think it is a settlement in *Sydbury*.—THE OTHER THREE JUDGES concurred in the same opinion.

If a person live in a parish where he has an estate in common with his mother and sisters, for 40 days, at different times, he thereby gains a settlement. Str. 1116. 1 Sess. Cas. 400.

676. *Rex* v. *St. Nyott's*, *T. T.* 13 *G.* 2. *Burr. S. C.* 132.—The pauper, was born in *St. C.*, and at 10 or 11 years of age he removed to *St. N.*, and lived in the service of *Cole* in that parish till he was 20; and then lived a year and upwards, as a hired servant at the wages of 5*l.* a year, with *Lyne* in *St. N.* He then removed to *St. C.*, and lived there with his mother some time, on a tenement there, in part of which he had an estate of freehold and inheritance, and of which he was seised in common, together with his mother and sisters. After he came back to *St. C.*, and until he sold his right and interest in the tenement, (which was about three years after his return to *St. C.*), he worked as a daylabourer, and lodged sometimes on his own estate, and sometimes in other places where he worked in the parish of *St. C.*, and at other times in other parishes adjoining: and he did not reside on his estate in *St. C.*, or in the parish of *St. C.*, by the space of 40 days together at any one time, between his leaving *St. N.* and selling his estate in *St. C.*—LEE C. J. I do not see how a man can be sent to a place where he has a freehold, unless he has been resident in such place for 40 days; though he could not be removed from it, even within the 40 days, if he was in the place where it lay. This depends upon the statute of 13 and 14 *Car.* 2. *c.* 12., which directs the sending a pauper to the place where he was last legally settled for the space of 40 days. But this man continued, off and on, for three years in the parish where he had an estate of freehold inheritance; and I do not think it to be necessary that he should have resided there 40 days together. He was irremovable from *St. C.* for above 40 days; and that is sufficient. I agree that he could not be sent to a place where he has an estate of inheritance, unless he had been settled at it, so as to be irremovable from it for the space of 40 days.—The three other Judges agreed in opinion, that if a man has lands of inheritance in a parish, it is not necessary that the residence be upon the lands; it is enough if he reside in the parish. And they also concurred with the C. J., that the 40 days need not be continued; a residence of 40 in the whole is sufficient.

A residence of less than 40 days upon a man's own estate, will not gain a settlement.

677. *Rex* v. *West Shefford*, *M. T.* 25 *G.* 2. *Burr. S. C.* 307.—*J. B.*, being settled in *Baydon*, came by certificate from *B.* to *S.*; and, during the time that he resided in *S.* under the certificate, he became beneficially entitled to a leasehold estate of 14*l.* a year, situated in *S.*, which had been granted by the trustees of the late Sir *W. T.* to the father of *J. B.*, and his assigns, for 99 years, determinable on the death of *J. B.* the grandfather, of the wife of *J. B.* the grandfather, and of this *J. B.*; this *J. B.*, being the last surviving life in the lease mentioned, entered upon the estate on the 17th of *November* 1750, and was possessed thereof; and also resided thereon from the time he so entered to the day of his death, which happened on the 15th day of *December* 1750, being 28 days, and no more: upon his death, (he being the last surviving life as aforesaid), the estate under the lease determined; and the paupers, who were the wife and children of *J. B.*, had no further interest whatever in the leasehold estate.—THE COURT was clearly of opinion, that 40 days' residence was necessary to

gain a settlement; and therefore the order removing the paupers from *S.* to *B.* was confirmed.

678. *Rex* v. *Houghton-le-Spring* (*a*), *H. T.* 41 *G.* 3. 1 *East*, 247. —The pauper acquired a settlement by apprenticeship with one *G.* a mason in the township of *H.* Shortly after the expiration of his apprenticeship he became entitled as heir-at-law to his cousin *M. W.* to three copyhold houses, let at 6*l.* a year, and one freehold house at *S.* Upon his becoming so entitled he agreed to let and did let to one *W.* the freehold house at 3*l.* *per annum*, the pauper undertaking at the same time to sink a cellar and make some repairs in the premises. *W.* accordingly entered and occupied the premises as a public-house. The pauper, in pursuance of his agreement after such possession by *W.*, went from *H.* (where he lodged with his father) to *S.*, for the sole purpose of sinking the cellar and making the repairs agreed upon. He was occupied in such work for upwards of 40 days, during the whole of which time he resided as a lodger in *W.*'s house. After finishing the work he returned to his father's. During the whole of the pauper's living at *S.*, on the occasion aforesaid, the copyhold houses were in mortgage to the said *W.* for 40*l.* The pauper continued in the receipt of the rents of the whole of the premises for several years, and then sold the same for 130*l.* — HOLROYD, in support of the order of Sessions, contended that the pauper, who was once settled in *H.*, did not acquire a subsequent settlement in *S.* by residence in the parish where he had an estate of his own in the occupation of another. First, The residence itself in the parish was occasional and accidental only, being for the special purpose of repairing the house which he had let to *W.* He did not reside there in his own right, but merely by the licence of *W.* and as his servant; which is not sufficient to confer a settlement; as was holden in *R.* v. *Catherington* (*b*), where a mortgagor, who was permitted by the mortgagee in possession to reside in the house for the purpose of overlooking some repairs which he proposed to make on the mortgaged estate with an intent to sell the same and pay off the mortgage, was adjudged not to have gained a settlement by such residence; although it is clear that a mortgagor in possession has such an interest as will confer a settlement by residence on his estate for 40 days. It did not indeed appear there whether or not there were any surplus after payment of the mortgage-money; but nothing turned on that point. The utmost therefore that can be collected from the facts here stated is, that the pauper resided, in fact, in the same parish in which his estate was situated. But, Secondly, that has never been deemed sufficient to confer a settlement, unless the owner was in the actual possession of it. It was indeed long doubted whether residence in the same parish where a party had property in his occupation were sufficient to confer a settlement unless he also resided upon it; that point, however, was settled in the affirmative in *Rex* v. *Sowton* (*c*): but the doubt could never have arisen if it had been considered to be immaterial whether or not the owner were in possession. The reason of the determination, that a person could not be removed from his own estate, was because it would be a disseisin of him from his freehold: but that can only apply where he is in the actual occupation of it at the time; for otherwise it is no

A pauper, having a freehold estate in the parish of A, in the occupation of a tenant to whom he had let it, was deemed to gain a settlement by residing thereon 40 days, with the licence of his tenant, for the purpose of making some repairs, such residence being considered as equivalent to a residence in any other part of the parish.

(*b*) *Ante*, pl. 688.

(*c*) *Ante*, pl. 675.

(*a*) See Rex *v.* Staplegrove, *ante*, pl. 658.

disseisin of him to remove him from any other property than his own. One who has leased his estate, as in this instance, has no more right to reside on it than a stranger. In order to gain a settlement by being irremovable from a tenement of 10*l.* yearly value, the party, though he need not reside on the estate provided he reside in the same parish, must stand in the relation of tenant to the premises; otherwise, as Lord *Kenyon* observed in *Rex* v. *South Lynn* (*a*), every lodger or servant would gain a settlement. If this be sufficient, two persons may gain settlements in respect of the same property, though not more in value than 10*l.* a year, the one as tenant, the other as landlord. (*b*) But though the particular point in judgment does not appear to have been expressly adjudged, there are several dicta in the books which show that it has been considered that a person may be removed from a parish wherein he had property if he were not in the occupation of it himself. In *Rex* v. *Dunchurch* (*c*), (which was the case of a purchase under 30*l.*), the pauper had at first resided in her own house, from whence she afterwards removed to another part of the same parish, and let the house to her son, under the idea that while she continued to live on her own freehold she could not be removed. There Lord *Mansfield* said, "as to removing a person from their own, she became an ob-"ject of removal *as soon as she had let it to her son.*" In another report of the same case, *Wilmot* J. says, "undoubtedly she "might be removed from the parish, *not residing in the house* "*which was her own.* (*d*)"—[LORD KENYON. That being a purchase under 30*l.*, the act of the 9 *G.* 1. *c.* 7. intervened, which provides that the purchaser shall continue irremovable no longer than while he *shall inhabit in such estate.* And a distinction has always been taken in that respect between the cases where the property came to the party by his own act or by operation of law.] —In *Rex* v. *Sowton* (*e*), which was not a case within the statute, it must be understood that the party was in possession of his property; for it was said by Lord Chief Justice *Lee*, "it appears "that he came to *Sydbury* to make it *his home and habitation.*" Besides which, the general expression which runs through all this class of cases, that a party shall not be removed *from his own estate*, seems to imply that he must be *in the possession* of it, though he need not actually reside thereon.—WARD, *contrà*, in answer to the cases cited, observed that in *Rex* v. *Catherington* (*g*) the mortgagee was in possession, and there did not appear to be any surplus on which the interest of the mortgagor could attach; therefore, as Lord *Kenyon* observed, the latter had neither *jus in re* nor *ad rem.* That case turned on another of *Rex* v. *St. Michael's, Bath* (*h*), which was considered as the case of an insolvent who had conveyed all his interest in the property to trustees for sale

(*a*) *Ante*, pl. 223.

(*c*) *Ante*, pl. 668.

(*h*) *Ante*, pl. 638.

(*i*) *Ante*, pl. 629.

(*b*) See the case of Llandverras *v.* Northop, Burr. S. C. 571. where it appears this may be done, even in the case of an underletting, provided the part underlet be of the annual value of 10*l.* But there the original tenant still continued to reside on a small part of the premises of the annual value of 2*l.*

(*d*) In the report of this case, 1 Black. Rep. 598. opposite the passage in question in the margin is this abstract: "A pauper may be removed from a "parish in which she has a freehold, "not living therein." Whether this were written by the learned judge himself does not appear. The work was published by his executors; but see the preface, p. 28.

(*e*) Burr. S. C. 182. There is a fuller note of this case in Andr. 845.

and payment of his debts, without a probability of any surplus; and the possession of which property he afterwards fraudulently obtained. Whereas here the pauper had a substantial freehold interest in the parish where he resided, and an undisputed residue in the copyhold premises. In *Rex* v. *Sowton* the party did not reside on his estate, but continued at an alehouse in the same parish for more than forty days, as a traveller or guest; and yet it was ruled that he gained a settlement. As to the case of *Rex* v. *Dunchurch* an answer has been already given. He then contended, First, That a man cannot be removed from his freehold or other estate devolved on him by operation of law, whatsoever the value may be. The reason is given by *Foster* J. in *Rex* v. *Aythrop*, *Rooding* (*a*), because by *Magna Charta* "none "shall be disseised of his freehold." — 2dly, A residence in a parish for 40 days irremovable, will gain a settlement where it is to be derived from property, unless in the excepted case of residence upon a purchase under 30*l*., by the stat. 9 *G.* 1. *c.* 7. 3dly, It is not necessary to reside on the identical estate of the party; but it is sufficient if he reside in the same parish. *Ryslip* v. *Harrow* (*b*), *Sowton* v. *Sydbury* (*c*), *Rex* v. *St. Nyott's* (*d*), and *Rex* v. *Hasfield* (*e*). 4thly, It is not necessary, for the purpose of gaining a settlement in these cases, that the owner should actually occupy his estate; it is sufficient to reside in the parish where he has a freehold. Here, indeed, the residence was, in fact, upon the pauper's own property; but though that were admitted to have been with the licence of *W.* only, yet it is at least equivalent to residence in any other part of the parish. In most of the cases it is true that the occupation went along with the title, but in some of them that does not distinctly appear, and the fact may have been otherwise. In *Ryslip* v. *Harrow*, Lord *Holt*'s language is general, that "living in a parish where one has land will give a "settlement." It is not qualified by saying that it is necessary to reside on it. He also adds, "the law takes notice of freeholders "as those who choose members of parliament and are jurors." It is then to be considered what is a freeholder; and occupation not being necessary to give him a vote, in order to make the allusion apply, it cannot be necessary to confer a settlement. From the report of the case of *Wookey* v. *Hinton Blewet* (*g*) it is competent to argue that a pauper may be sent to a parish in which he has land, though in the occupation of another: at any rate no stress was laid on the circumstance of occupation. The same observation arises upon the language made use of by the Court in *Burclear* v. *Eastwoodhay* (*h*); and on the words of the act of 9 *G.* 1. *c.* 7. § 5., where it is enacted that no person shall acquire any settlement by virtue of any purchase of "any estate or *interest*" in any parish, &c. the consideration of which was less than 30*l*. If occupation had been considered as essentially necessary, the word *interest* would not have been used. But the case of *Rex* v. *Hasfield* is in point. There an infant, eight years old, was removed from *Tirley* to *Hasfield*: and it appeared that on the death of his parents a year and a half before he became seised in fee by descent of an estate at *T*; and he and an infant sister, "being in the said parish of *T.* with their grandmother their "nearest relation above 40 days," were removed from thence to *H.*, where their father was settled at the time of his death. Lord

(*a*) *Ante*, pl. 616.
(*b*) *Ante*, pl. 673.
(*c*) *Ante*, pl. 675.
(*d*) *Ante*, pl. 676.
(*e*) *Ante*, pl. 613.
(*g*) *Ante*, pl. 674.
(*h*) *Post*, pl. 681.

C. J. *Lee* made a difference between the case of the two children. He said, "*B.* is seised in fee of an estate in *T.*, and it is not "material *quo animo* he came into that parish, or how long he has "been in it: it is not a case within the 13 & 14 *Car.* 2. *c.* 12, "because, having an estate of his own *in the parish*, he is not (a) *Ante*, pl. 675. "removable from it." In *Sowton* v. *Sydbury* (a) "the difficulty was "upon the residence of 40 days in a place where the man was to "gain a settlement in respect of his *freehold*. But I think it clear "that *B. could not be removed from his freehold.*" *Probyn* and *Chapple* J. "concurred that *B.* could not be removed *from the* "*parish where he had a freehold.*" Now it is plain from the language of the Court that the point of residence upon the property was put entirely out of the question. Besides, it is impossible to consider that a child of such tender years could be in the actual possession of the property; and it is probable that the grandmother did not reside upon his estate. — LORD KENYON C. J. The case last cited has relieved me from any further difficulty. When I first read the case before us, I had a full conviction on my mind that it was a decided point that residence for 40 days in the parish in which the party had a freehold estate would confer a settlement there, whether he resided on the estate or not, or whether or not he were in the occupation of it. The cases which were at first cited distressed me considerably, because it was argued that there was no authority in point, and that in all the cases which had been determined in favour of the settlement being gained the fact of the occupation by the pauper occurred, and that the reasoning of the Judges in those cases showed that it was a necessary ingredient in the judgment. It seemed to me, however, to be a most extraordinary proposition to establish, that a man might be removed from a parish in which he had property, perhaps to a considerable amount, but whether more or less in such a case is unimportant, because he has let it out; and that if he afterwards come there again he was liable to be treated as a vagrant. A man, though not in the actual occupation of his own estate, may have many reasons for wishing to live in the neighbourhood of it. He is entitled to the privilege of superintending it. But according to the doctrine contended for, he may be sent to another part of the kingdom, if his settlement happen to be there. There are instances of whole townships belonging to the same person, the whole of which may be in lease; and if the landlord were to reside in the house of any of his tenants, can it be imagined that he would be liable to be removed by an order of justices? I was sure that the contrary had been decided; and I have a MS. note of the case cited, though I could not recall it at once to my memory. Even in the absence of any express authority upon the subject I should have formed the same opinion, and I am sure the current of opinions has gone that way. However, I am glad to be relieved from all difficulty by the case which has been cited. There the child residing with his grandmother cannot be taken to have been in the actual occupation of the property; nor did the judgment of the Court proceed upon any such ground. This is not a case falling within the act of the 9 *G.* 1. like some of the cases cited, which, as I before observed, are excepted out of the general rule by the very words of the act. — GROSE J. The general impression on my mind has been, that if a party resided in

the same parish where he had property, whether he resided on it or not, he gained a settlement: but I am not aware that my attention was ever before particularly pointed to the distinction between a legal and an actual possession of such property. Here, indeed, the pauper was corporeally resident upon the property; but I consider that the possession was, properly speaking, in the lessee. Now, by distinguishing this case out of the general rule, we are splitting the rule unnecessarily, so as to make it more difficult for the magistrates below to act upon it. That the rule itself is large enough to include this case appears from the passage cited from the case of *Ryslip* v. *Harrow* (*a*), as said by Lord *Holt*, and also from the opinion of the Judges in *Rex* v. *St. Nyott's* (*b*), particularly what was said by the three judges who agreed in opinion with Lord Chief Justice *Lee*, that if a man "*have lands of inheritance* "*in the parish* it is not necessary that the residence should be upon "the lands; it is enough if he reside in the parish." They do not say, "if he have lands of inheritance *in possession* in the parish," &c. In addition to these is the case of *Rex* v. *Hasfield* (*c*), upon which very proper comments have been made. The reason assigned by Lord C. J. *Lee* why the boy was not removable within the statute of *Car.* 2. is, "because he had an estate of his own in the parish:" he does not say, an estate in his possession or occupation. Upon the whole, therefore, I would rather abide by the general rule than qualify it with the exception now contended for, which does not seem to be grounded in the opinions of our predecessors. And, therefore, I am of opinion that a settlement was gained in *S.*—LAWRENCE J. I must own I have great doubts upon this subject. If I thought that the rule had been once settled so as to embrace the point before us, whichever way the decision had been, I would on no account disturb it. I have always conceived the rule to be, that where a man is in the occupation of an estate, of whatever value, which came to him by operation of law, he may gain a settlement by residing in the same parish for 40 days: but I cannot find any case where, if he parted with the possession, the same rule has prevailed. On the contrary, the reasoning of the Judges in the several cases referred to seems rather to go the other way. In *Ryslip* v. *Harrow*, Lord *Holt* assigns, as a reason for the rule which has been mentioned, that "the act of *Car.* 2. never meant "to banish men from the enjoyment of their own lands;" which only applies to a case of actual occupation. So in the case alluded to of *Rex* v. *Aythrop Rooding* (*d*), the reason assigned by *Foster* J., why a man should not be removed from his own is, "because none "shall be disseised of his freehold." But how is he *disseised* by the removal if he had before let it to another? He loses no right which he before enjoyed; he is still entitled to receive his rents the same as before, and he could have had no more if he had remained in the same parish. If, however, the last case mentioned of *Rex* v. *Hasfield* had decided that point, I should have abided by it: but it does not appear, upon the statement of the case, that the grandmother was not living at the time in the house of the infant, and therefore she might be considered as having a possession for the infant, which would be the same thing for this purpose as his actual possession. It is difficult to say how far the argument may be carried. A man may have a legal title and yet be out of possession: would it be contended that in such a case he might gain a

(*a*) *Ante*, pl. 678.
(*b*) *Ante*, pl. 676.
(*c*) *Ante*, pl. 613
(*d*) *Ante*, pl. 616.

settlement by 40 days' residence in the same parish? Would the same rule extend to the case of one who has a reversionary interest? Upon the whole, not thinking that the cases have hitherto gone further than to give a settlement to one who is *in possession* of his own estate, I have great doubts how far the rule ought to be extended further. Here I cannot consider the pauper as being in possession of the premises at the time. He was merely permitted to reside there for a special purpose by the licence of the tenant, who might have turned him out at a moment's warning.—LE BLANC J. This is a new question, of which I also have great doubts, and should like to have further time for consideration. There are expressions which have a contrary tendency to each other in the very same case, and coming from the same Judge. For in *Ryslip* v. *Harrow* (*a*), Lord *Holt* is first made to say, that the law takes notice of *freeholders*, &c.; from whence it is to be inferred that he thought that residence in a parish where a man had a *freehold*, though not in possession, would confer a settlement. But when he had before said that the statute never meant to banish men from the *enjoyment* of their own lands, it seems as if he were speaking merely of persons in possession of their own property. It cannot, therefore, be collected with any certainty how the fact stood in that case. So in the case of *Rex* v. *Hasfield* (*b*) it does not appear whether the boy, though too young to be in the actual possession himself, were not resident with his grandmother upon his own property. If so, it leaves the question as it was before. As to the circumstances of the present case, I consider it to be the same as if the pauper had lodged at any other public-house within the parish, and not in that of which he was the landlord; for it is stated that he had before agreed to let it to *W.*, and that *W.* had actually entered and occupied the premises, and that the pauper afterwards resided there as a *lodger* in *W.*'s house. He had, therefore, no right of possession, and *W.* might have turned him out whenever he pleased. This, therefore, must be considered as a case where the party had property in the parish, but that he did not reside on it, and that another was in possession of it. And that brings it to the true question, Whether such a one can gain a settlement by residing for 40 days in the same parish. At first I thought the question had been decided by the cases of *Rex* v. *Sowton* (*c*) and *Rex* v. *St. Nyott's* (*d*), but upon looking more narrowly into them, I find there are circumstances of doubt whether the party were not in possession of the property. Perhaps on looking further into the cases, and particularly into that of *Rex* v. *Hasfield*, we may find something decisive to direct our judgments. But if it should be found to be altogether a new question, the inclination of my opinion is, that a person who has not the possession, but only the property of an estate, and a right to receive the rents, is not irremovable from the parish where such estate is situated. *Cur. adv. vult.*—On this day (the former opinions having been delivered two days before), LORD KENYON C. J. said, that the Court had looked more particularly into the case of *Rex* v. *Hasfield*, and they were now all of opinion upon the authority of that case (*e*),

(*a*) *Ante*, pl. 673.

(*b*) *Ante*, pl. 613.

(*c*) *Ante*, pl. 675.

(*d*) *Ante*, pl. 676.

(*e*) In the report of the same case in 2 Str. 1132, it is stated that the order was quashed as to the boy; for as to him he was tenant in fee of the 4*l. per annum*; and though *it was not stated that he was actually on that spot*, yet it was enough that he had *such an estate in the parish from which he could not be*

which governed the present, that the settlement was in *S.* — Both orders quashed.

679. *Rex* v. *Dorstone*, *H. T.* 41 *G.* 3. 1 *East*, 296. — The pauper having gained a previous settlement at *M.*, went, prior to *November* 1778, to reside with his wife and family in *B.*, upon a tenement which he rented there at 1*l.* 15*s.* *per annum*. On the 14th of the same *November*, and whilst the pauper resided at *B.*, *M.* died intestate, seised of a freehold house and lands in *B.*, which descended to the pauper's wife and her two sisters as coparceners, being the grandchildren and coheirs of the said *M.* On the 14th of *December* then next the pauper entered into the following agreement to sell his wife's share of the house and lands to *D.*, husband of one of her sisters: "An agreement made between *J.* "and *M. D.*, of *B.*, of the one part, and *M.* and *A. P.*, of the "said parish, of the second part, and *W.* and *M. C.*, of *T.*, of "the third part, witnesseth, that the said parties have agreed and "firmly bound themselves in the sum of 20*l.*, which money is to "be forfeited if either of the parties do not stand to the valuation "of the tenement and lands now in the possession of *R.* and *D.*, "which land is to be valued by two or three men according to "their valuation upon oath if required. If it is not all freehold, "then it must be an abatement in the said price; or if it should "be more land, then it must be valued according to the price. "The purchase-money is 84*l.*, the purchaser to pay the expence "of the writing. I bind myself to pay the money at *Candlemas* "next, if there is a good title made." Signed by the pauper, his wife, and the other parties. After the agreement was signed, the referees valued the pauper's wife's share of the premises at 28*l.* The deeds not being ready by the 2d of *February*, the pauper complained, and *E.*, agent for *D.*, offered to pay him three months' rent for his wife's share of the premises, if required; but the pauper did not require it. The deeds were executed and the money paid the latter end of the said *February* or beginning of *March* 1779. From the 14th of *November* 1778, when the grandfather died, to the execution of the deeds in the latter end of *February* or *March* following, the pauper resided in the tenement he rented at *B.*, but did not occupy any part of the tenement which descended to his wife and her sisters. The house and garden were in the occupation of the said *D.* and his wife, one of the coparceners, and the rest of the land was occupied by one *M.*, who had been tenant to the grandfather. — PARK was to have argued in support of the order of Sessions, and WILLIAMS Serjt. *contrà*; but the former admitted, that after the recent decision of the Court in the case of *Houghton-le-Spring*, he could not contend that the pauper might not gain a settlement by residing in the same parish in which he had an estate of freehold in right of

While the pauper resided in the parish of B, a freehold estate descended to his wife and her sisters, as coparceners in the same parish, and in a month after the pauper and his wife contracted to sell their share, but the conveyance was not actually executed for more than 40 days after their title accrued: Held, that the pauper was thereby settled in B, although the estate during all the time was in the occupation of another.

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removed. It is also to be collected from a MS. note of the late Mr. *Masterman* that the boy was not living on his estate. It also appears that the settlement of the same pauper was afterwards disputed again between *Ryslip* and *Hendon parishes*, 5 Mod. 416., and the principal question was, Whether Ryslip was concluded by the former order? but incidentally stress was laid on the circumstance of this pauper having *a freehold* at *Hendon*. *Holt*, C. J. says, "Let a man be settled where he will, "we are all of opinion he may go and "live where he has an *estate*, and, "therefore, that he might have gone "to the place where he had a *freehold*."

his wife, although in the occupation of another. But he suggested a distinction between this case and that; that here the title accrued on the 14th of *November*, and within less than 40 days, *viz.* on the 14th of *December*, the pauper bound himself to convey away the property. — THE COURT, however, said, that the contract was executory, and the conveyance was not actually executed till long after the 40 days were expired, till when the title remained in the pauper, and, consequently, he gained a settlement in *B.* — Order of Sessions quashed.

The pauper having taken a farm at A. for nine years, at 26*l.* 5*s.* payable on the 1st of *July*, was to enter on the arable on the 14th of *February*, and on the dwelling-house and the rest of the premises on the 13th of *May* following: and accordingly entered on the arable, worth above 10*l.* a year, and began to plow and fence; and agreed with the tenant in possession to let him board in the house, where he also slept, at 1*s.* a day, while he so husbanded the land; and staid there at different intervals for 16 days in the whole before the 6th of *May*, when the tenant gave him up the possession of the house, &c. and the pauper removed thither his wife, family, and goods, who till then had resided on another farm in another parish, where the pauper also had mostly dwelt; and

680. *Rex* v. *Caton*, *H.T.* 47*G.*3. EDITOR's *MSS.*—Two justices removed *H.* and his five children, by name, from *C.* to *E.* The Sessions, on appeal, quashed the order, subject, &c. *H.* being legally settled at *E.* in *November* 1805, took a farm at *C.*, consisting of a dwelling-house, out-buildings, and seven acres of land, seven miles from *E.*, for the term of nine years, at a rent of 26*l.* 5*s.*, payable on the 1st of *July* yearly; and it was agreed that he should enter upon the lands, for husbandry and tillage, on the 14th of *February* 1806, and in the possession of the house and the rest of the premises on the 13th of *May* following, being the usual times of entry on farms in the neighbourhood. The dwelling-house and a small part of the lands had been previously let to one *T.*, and the residue of the lands to other tenants. Between the 14th of *February* and the 8th of *March* 1806, *H.* entered into possession of the land in *C.* according to agreement, which was above the annual value of 10*l.*, repaired the fences thereof, hired a person, who plowed part of the land, and did other usual acts of spring husbandry. Soon after his entry upon the said land, *H.* required *T.*, then in possession of the dwelling-house, and who had a right to hold it till the 13th of *May* following, to take him to board at 1*s.* a day, while he was husbanding the land, to which *T.* consented; nothing was said about his sleeping there; but *T.*'s wife said, she presumed *H.* would want to sleep there, of course. *H.* stayed three or four days together in *C.* at different times, between the 14th of *February* and the 6th of *May*, when he took possession of the dwelling-house as after-mentioned, husbanding the land, and boarding at *T.*'s house, and sleeping there with one of *T.*'s children, in all for about 16 days, and continued for the residue of the time, between the 14th of *February* and the 6th of *May*, with his family in *E.* Towards the latter part of the time, before *H.* entered upon the dwelling-house, one of his sons assisted him in husbanding the land, and boarded and slept with him about a week at *T.*'s, for which he paid 1*s.* a day extra; and during such time *H.* brought a horse of his own from *E.* to *C.*, which he employed in loading stones off the land he had so taken, and stabled him at *T.*'s, by his leave, providing his own hay. On the 6th of *May* 1806, *T.* voluntarily delivered up possession of the dwelling-house and out-buildings on the farm in *C.* to *H.*, who, on the same day, removed thither his wife and children, household furniture, cattle, and goods, from his former farm in *E.*, in which his tenancy expired, as to the land, on the 14th of *February*, and as to the buildings, on the 12th of *May* 1806. Soon after the removal of his family to *C.* his wife died; and on the 36th day of his residence in *C.* with his whole family, reckoning from the 6th of *May* last, *H.*'s goods were seized and sold under an execution obtained by one of his creditors; and he applied to the overseer

of *C.* for relief, and agreed to quit the farm there. The overseers of *C.* relieved *H.* and his children, and kept them a day and a night longer in a house appropriated for the use of the poor at *C.*, and on the 38th day (computing from the 6th of *May*) *H.* and his children were removed by the order in question from *C.* to *E.* — SCARLETT, in support of the order of Sessions, adverting to the case of *Doe* and *Lord Bradford* v. *Watkins* (*a*), and that class of cases, said that it might have been a question, whether, upon such a holding as this, the notice to quit must not have referred to the time when the tenant was to take possession of the dwelling-house and the rest of the premises; but by the words of the statute 13 & 14 *Car.* 2. *c.* 12., on which this question turns, the party can only be removed within 40 days after he shall *come to settle* in any tenement under the yearly value of 10*l.*, and here it was evident that the pauper came into the township of *C. to settle* while he boarded and lodged with *T.* for the purpose of superintending the lands which he had taken possession of under his leases, which would make in all a residence of above 40 days in *C.* — LORD ELLENBOROUGH C. J. who asked, if the pauper did not come to settle in *C.*, what he came there for? — TOPPING, who was to have supported the original order of justices, then declined arguing the case. — PER CURIAM, *absente* GROSE J.—Order of Sessions confirmed. (*b*).

after the 6th of *May*, he only remained on the farm in A. for 36 days, when he failed, and applied for relief, and after being kept a day in the poor house, agreed to give up his farm, and was removed: Held, that this was a *coming to settle* upon the tenement in A. from the beginning of his lodging with the outgoing tenant; which, joined with his residence there after the 6th of *May*, made above 40 days in the whole, and settled him there.

V. *Of certificated Persons.*

681. *Burclear* v. *Eastwoodhey*, *E. T.* 5 *G.* 1. — *H.*, being legally settled in *B.*, about 18 years before the removal, married, and had four daughters; and about ten years afterwards went with his wife and children into *E.* as a certificate-man. Whilst they were there, a copyhold of 20*s.* a year was surrendered to his wife by her father, which they enjoyed for five years till her death, and then according to the custom of the manor it descended to the eldest daughter. About half a year ago the man asked relief in *E.*, and thereupon the Sessions sent him back to *B.* It was contended that as the statute 9 & 10 *W.* 3. *c.* 11. had provided that a certificate-man should not gain a settlement except he take a tenement of the yearly value of 10*l.* a year, or execute an annual office in the parish; the pauper had not gained a settlement in *E.*, by residing on this estate, for that the statute being an explanatory act, must be literally taken, and could not be extended by construction to any case not expressly within it; and that the pauper, not being within either of the cases therein mentioned, was removable from this estate on his becoming actually chargeable to the parish. — SED PER CURIAM: This is not an explanatory, but a new law, and must, therefore, receive a liberal construction. The exceptions in the statute prove that this case is a case more reasonable than either that are there mentioned. If a certificate-man, by taking a tenement of 10*l.* *per annum* gain a settlement, *à fortiori* shall he who has an estate of his own, especially in this case, where he does not come to it by his own act, (which might favour of fraud,) but it is cast upon him by the act and operation of law. If he who serves a parish-office gains a settlement upon account of his presumed ability,

A certificate-man gains a settlement by residing on his own estate, although the 9 & 10 Will. 3. c. 11. says that no certificate-man shall gain a settlement except by renting a tenement of 10*l.* a year, and although the estate is under that value.

S. C. Str. 163. 10 Mod. 480. S. C. Sett. and Rem. 88. And see Rex *v.* Deddington, *post*, pl. 684.

(*a*) 7 East, 551. (*b*) *Vide* Rex *v.* St. Mary Lambeth, *ante*, pl. 465.

with greater reason shall he who has ability of his own visible to all the world. It has been already adjudged, that any other person, by the descent or purchase of a freehold or copyhold (*a*), or by becoming entitled to a lease for years, gains a settlement; and it cannot be supposed that the legislature intended to put a certificate-man in a worse condition. The value of the copyhold is not material, for it is its being his own that makes him not removable. A man must take a tenement of 10*l.* *per annum* to gain a settlement; but yet he may come to settle upon a tenement of his own, though of ever so small a value. This man, therefore, being for five years irremovable from *E.*, has gained a good settlement there, and the order to remove him from thence must be quashed.

(*a*) Harrow *v* Edgware, *ante*, pl. 608.

And such certificated person gaining a settlement in the certificated parish, will notwithstanding 12 Ann. c. 18. confer a settlement therein to his apprentice.

682. *Ivinghoe* v. *Stonebridge*, *H. T.* 6 *G.* 1. *Str.* 265. — In 1702 *P.* was bound apprentice to *E.*, who was legally settled in *I.*; he served part of his time there, and then the master went with all his family as a certificate-man to *S.*, where he purchased an estate of the value of 60*l.*, and after such purchase the apprentice lived with him six months till the apprenticeship expired. The statute 12 *Ann. c.* 18. provides, that the apprentice of a certificate-man shall gain no settlement in the parish to which the master goes by certificate, therefore the justices adjudged the settlement at *I.*, where the binding and great part of the service was. — SED PER CURIAM: The order must be quashed: for as the apprenticeship expired in 1709, the statute 12 *Ann.* is out of the case, not being made with any retrospect; and then the case is no more, than that an apprentice of a certificate-man lives 40 days in *S.*, which before that statute was enough to gain him a settlement. But if this had been a case since the statute, yet we think the settlement would be in *S.*; for, according to the case of *Burclear* v. *Eastwoodhey* (*b*), when a certificate-man makes a purchase, he immediately ceases to be there in nature of a certificate-man, and becomes a settled inhabitant; so that, laying the statute out of the case, (as we must do, it being nothing to the purpose,) in this view here is a service for six months as an apprentice, in a parish where the master was legally settled, which is more than sufficient to give a settlement to the apprentice.

(*a*) *Ante*, pl. 681.

A certificated person who resides 40 days on leasehold premises purchased by him, gains a settlement notwithstanding the statute 9 & 10 Will. 3. c. 11.: for an estate acquired as well by *purchase* as by *descent* will avoid a certificate though under the value of 10*l.* a year.

683. *Rex* v. *Stansfield*, *E. T.* 16 *G.* 2. *Burr. S. C.* 205. — *B.*, being settled in *S.*, came into the township of *Spotland*, in the parish of *R.*, by virtue of a certificate: by a deed not indented, bearing date the 4th *February* 1728, made between *A.* of *T.* in the parish of *R.* aforesaid, yeoman, of the one part, and the said *B.* on the other part, the said *A.* demised to *B.*, his heirs, executors, administrators, and assigns, 20 square yards of land in *W.* in the said parish, to hold to him, his executors, administrators, and assigns, for the term of 999 years, under the reserved rent of 1*s.* a year; by virtue whereof, *B.* entered to the said premises, and afterwards erected a house and other out-buildings upon the same: and by indenture bearing date the 9th day of *July* 1730, made between the said *B.* of the one part and *H.* of *Hoodley*, of the other part, the said *B.*, in consideration of 16*l.* 10*s.* paid to him by *H.*, assigned the premises, with the buildings thereupon erected, to *H.* his heirs, executors, administrators, and assigns, during the residue

of the said term of 999 years; to hold to the said *H.*, his heirs and assigns; by virtue thereof entered to the premises. And afterwards, by indenture bearing date the 16th day of *September* 1731, made between the said *A.* of the one part, and the said *H.* of the other part, the said *A.* leased, set, and to farm let, to the said *H.*, his heirs, executors, administrators, and assigns, the said 20 square yards of land before granted by him to the said *B.*, and also, &c. and also, &c. to hold to the said *H.*, his heirs, executors, administrators, and assigns, for the term of 999 years: by virtue of which grant, the said *H.* entered to the said premises: afterwards an uncle of *B.*'s having died, and left some money to the said *B.*, he thereupon applied himself to the said *H.* in order to purchase the said premises by him the said *B.* before sold to the said *H.*, and also the said premises granted by the said *A.*, by the deeds last above mentioned. Upon which the said *H.* and he came to an agreement; and by indenture bearing date the 9th day of *July* 1736, made between the said *H.* of the one part, and the said *B.* of the other part, (reciting all the deeds before-mentioned,) the said *H.*, in consideration of 47*l. bond fide* paid to him by the said *B.*, bargained, sold, assigned, and set over unto the said *B.*, his heirs and assigns, all and singular the before-mentioned premises, to hold unto the said *B.*, his heirs, executors, administrators, and assigns, during the residue of the said several terms of 999 years then to come: that the said premises all lie in the said township of *S.*, and at that time were worth the said sum of 47*l.*, and now are worth the sum of 63*l.* to be sold: by virtue of which grant, the said *B.* entered into the said premises, and inhabited upon the same for two or three years then next following. That by indenture bearing date 23d day of *May* 1738, the said *B.* assigned over the said premises to the above-named *H.* by way of mortgage, for the sum of 45*l.* *B.* was removed by two justices from *S.* to *Spotland*; but the Sessions quashed the order of removal and stated the above case. It was contended that this *purchase* did not gain *B.* a settlement in *Spotland*, for that by 9 & 10 *W.* 3. *c.* 11. no certificated person could gain a settlement by any act whatsoever, except by taking a tenement of 10*l.* a year, or executing an annual office in the parish; and that the voluntary purchase of a leasehold estate for 999 years for 47*l.*, was not without either of those exceptions. — LEE C. J. I do not know that the certificate act has been taken so strictly. A descent or a devise, and I believe a purchase too, have been determined to gain a settlement (after 40 days' residence) upon the foot of the person's not being removable from his own, and as not being an intruder within the meaning of 13 & 14 *C.* 2. *c.* 12. So that whenever a man has an interest of his own, though under 10*l.* a year, he shall not be removable by that statute. The present question turns indeed upon the construction of the certificate act 9 & 10 *W.* 3. *c.* 11. Now, though this person was a certificate-man, yet if he had come to this by act of law, it would have gained him a settlement; and I believe it has been so determined in the case of *Rex* v. *Burclear* (*a*) on purchases too. I think the same construction has been made upon this act, as upon that of 13 & 14 *Car.* 2. Before 9 *G.* 1. *c.* 7. every body that came into a parish and made any purchase whatsoever was irremovable. We think the Sessions wrong, and the two justices right; for a certificate-

(*a*) *Ante*, pl. 681.

man gains a settlement by becoming irremovable, and continuing so for 40 days: — and the order of Sessions was quashed and the original order affirmed.

The settlement gained by a certificated person by living 40 days on a purchased estate in the certificated parish is conveyed to his unsettled children.

S. C. Stra. 1193.

684. *Rex* v. *Deddington* (*a*), *T. T.* 16 & 17 *G.* 2. *Burr. S. C.* 220. — *Richard M.*, the father of the pauper *Edward M.*, who was removed with his wife and family from *D.* to *T.*, about the year 1719 had a certificate from *T.* to *D.*, which acknowledged the said *Richard M.*, and *Anne* his wife, and *Edward* their son, to be inhabitants legally settled in *T.*; *Richard* and *Anne*, and *Edward* their son, lived in *D.* many years under the certificate, during which time *Richard* purchased a dwelling-house in *D.* for 42*l.*, and paid for it with his own money, and afterwards dwelt in it many years. *Edward M.*, his son, lived with him therein as part of his family for many years, and never gained any settlement of his own. *Richard M.* sold the messuage five years ago; *Edward*, the son, had no interest therein, but became chargeable to *D.*; *Richard M.*, the father, is living, but has now no house or estate whatsoever in *D.* — LEE C. J. The present case is no more than this: A certificate was given many years ago to old *Richard* and his wife, and *Edward* their son; afterwards *Edward* marries and has children; *Edward*, and his wife and children, are the present paupers; old *Richard* made the purchase in *D.* Now, the act of 9 & 10 *Will.* 3. *c.* 11. mentions the doubts that had arisen upon the former act, and then declares, "that no settlement shall be gained by certificate persons, except "by the two methods therein specified." But I think the case of *Burclear* and *Eastwoodhey* (*b*) is an authority in the present case, that order has now been read, and it appears "that a cer- "tificate-man's wife's father surrendered to her a copyhold of 20*s.* "*per annum*;" and this was held a settlement, though it was most plainly neither of the two cases mentioned in the act. I remember the case. *Pratt* Lord C. J. held it more than equivalent to renting 10*l.* a year. *Eyre* J. held, that the construction of this act of 9 & 10 *Will.* 3. should be agreeable to that of 13 & 14 *Car.* 2. *c.* 12., upon which a man was irremovable from any tenement of his own, though it should be under 10*l.* a year. I do not see that the parish will be safer as to the notice arising from renting 10*l.* a year, than as to the notice arising from a purchase; there seems to be an equal notoriety in both cases. If this act were to be taken so strictly as has been contended for, a certificate man could never gain a settlement, though he should purchase 5000*l.* a year. One of the other judges in that case of *Burclear* observed, indeed, that it was not strictly to be considered as an act of the party himself, as he came in by the surrender to his wife; but all the Court held it not to be within the prohibition of the act of 9 & 10 *Will.* 3., the man being irremovable as long as he had any thing of his own, though he should become actually chargeable to the parish. And if this be so in the case of the old man, *Richard M.*, then all his rights will be communicated to those that derive from him; for, after gaining a settlement by purchase, the man himself is to be considered as an inhabitant of the parish

(*a*) See Rex *v.* Leek Wotton, *post*, pl. 749.

(*b*) *Vide* Cases of Settlements, p. 90. case 121, and Sir J. S. 163, 164. S. C. But Sir J. S. is under a mistake in stating it to have been a descent to the wife; it came to her by the surrender of her father.

in which he has gained it, in the same manner as if he had actually rented a tenement of 10*l.* a year, or executed an annual office; in which cases it must be agreed, that legitimate children who have no settlement of their own, must derive from their father's last legal settlement (for the settlements which the father might have previous to the last are out of the case, as much as if there never had been any such, they being extinguished by his gaining a new one, and having no more existence.)—WRIGHT and DENNISON Js. concurred with the chief justice in opinion, and expressed themselves to the same effect. And Sir JOHN STRANGE observing, that it was stated, that the old man's settlement in *D.* was at an end, and therefore this might alter the case, THE COURT said, It did not, because it did not appear that he had gained any subsequent settlement. This was his last legal settlement, and it may very well remain so, though he has no estate there now.

See Rex v. West Shefford, *ante*, pl. 677. *accord.*

685. *Rex* v. *Cold Ashton* (*a*), *H. T.* 31 *G.* 2. *Burr.* 444.—In *July* 1725, *D. H.*, and *Mary*, his wife, went from *W.* to *C. A.*, with A CERTIFICATE from *W.*, directed to *C. A.*, acknowledging that they were inhabitants legally settled in *W.* *D. A.*, and his wife, lived in *C. A.* under the certificate, from *July* 1725, till about *Christmas* 1728; at which time *W. F.*, the father of the said *Mary*, died intestate, leaving the said *Mary*, his daughter, and five other children. He was, at the time of his death, possessed of, and entitled to, a tenement and two acres and a half of land, of the yearly value of 6*l.* 17*s.* in *C. A.*, for the remainder of a term of 99 years, determinable on the death of himself, and of the said *Mary*, his daughter. Upon his death, *D. H.*, and his wife, entered upon and took possession of the said tenement and land; and lived in, and occupied the same, ever since until this time; but no administration of the goods or personal effects of *F.* was ever granted to, or taken out by, *D. H.*, *Mary*, his wife, or either of them, or any other person.—LORD MANSFIELD. The question is, Whether *D. H.* gained a settlement in *C. A.*, to which place he came originally as a certificate-man? *D. H.* had been 29 years and a half in possession at the date of the order: the question is, Whether he is within 9 & 10 *W.* 3. *c.* 11., which mentions only two methods whereby certificated persons can gain settlements in parishes to which they come with certificates, *viz.* taking a lease of a tenement of 10*l.* *per annum*, or executing an annual office. But an estate of a man's own, from which he cannot be removed, has been, by construction, (and a very reasonable one too,) holden to be within this act; for it would be a very hard thing to remove a man from his own estate. And the rule holds as well in the case of a certificate person as in any other case, that no person ought to be removed from his own property and estate. The principle of this determination is, because a property of a man's own is a stronger case than hiring another person's of 10*l.* *per annum* value. And THE COURT held that he had acquired such a right to this estate by 20 years' possession, as gave him and his family a settlement in *C. A.* in avoidance of the certificate.

A certificate-person gains a settlement, in avoidance of the certificate, by residing 40 days on any estate which would confer a settlement on another person; for the 9 & 10 Will. 3. c. 11. makes no difference in that respect.

686. *Rex* v. *Long Wittenham*, *M. T.* 24 *G.* 3. EDITOR's *MSS.* Two justices removed the paupers from the parish of *U.* to *L. W.*; and the Sessions, upon appeal, confirmed the order, and stated

If husband and wife be certificated, and the husband pur-

(*a*) See Rex *v.* Leek Wotton, *post*, pl. 749.

chase an estate in the certificated parish, the widow and her children born under such certificate will gain a settlement by residing 40 days thereon after the husband's death.

S. C. Cald. 474.

the following case: *John W.*, and *Jane* his wife, being certificated from *L. W.* to *U.*, went, about the year 1764, to reside in *U.* under such certificate. In the year 1765, *John W.* purchased a cottage, with a small piece of garden-ground, for the sum of 5*l.* in *U.*, and continued to live upon that tenement with his wife and family under the same certificate until the time of his death, which happened on the 15th *February* 1784. During such residence at *U.*, he had issue two sons, *viz. John* and *William*, and two daughters, *Mary* and *Rachael*. A short time before his death, *John W.*, the father, and all his family, except *Rachael*, were seised with the small-pox. *Rachael*, being free from the infection, was removed to the house of a brother-in-law within the same parish, to stay until the family should be recovered from the disease, and was then to return home to her father's family, but which she never did previous to the present order of removal. The father and the family became actually chargeable to the parish of *U.* a little before his death, and the family continued so till the removal. The father died, as above mentioned, intestate, and seized in fee of the said cottage and garden-ground, leaving the pauper, *Jane W.*, his widow, *John*, his eldest son and heir-at-law, of the age of 19 years, and *William*, *Mary*, and *Rachael*, his only children then surviving, of the respective ages mentioned in the order of removal. *Jane*, the widow, *William*, and *Mary*, were ill of the small-pox at the time of the father's death, and these, together with all the other children, except *Rachael*, were residing on the said estate at the time of his death, and continued constantly to reside thereon for the space of 10 weeks, at the end of which time the said pauper was removed as above mentioned. The question was, Whether, under these circumstances, the widow, *Jane W.*, had, as a certificated person, gained a settlement by residing upon this estate at *U.* for 40 days after her husband's death? — MILLES, upon the authority of *Rex* v. *Painswick* (*a*), being mentioned by the Court, admitted that a settlement may be gained by *quarantine*; but he contended that a certificated person cannot gain a settlement by this species of estate, as a widow has, in such case, only a right of residence, and not a possession of the estate. The counsel on the other side were stopped by the Court, who thought it too clear a case to be questioned. — LORD MANSFIELD. The statute of *Magna Charta* says, that a widow shall have her 40 days; and, therefore, there is no doubt that the pauper *Jane*, in the present case, was irremovable for 40 days, and thereby gained a settlement. As to the daughter *Rachael*, she was separated from her family by the act of God, and it cannot be considered an emancipation so as to prevent her gaining a settlement. The point was determined in *Rex* v. *Painswick*. — The order of Sessions was, therefore, quashed.

(*a*) *Ante*, pl. 627.

But the question whether a voluntary grant of an estate confers a settlement to *a certificated man* has been doubted.

687. *Rex* v. *Warblington*, *E. T.* 26 *G.* 3. 1 *T. R.* 241. — The lord of the manor of *H.* had granted to the pauper's father a small parcel of the waste of the manor, on which he had built a house, and resided in it with his family for many years; but there was no evidence whether it was granted voluntary, or for a valuable consideration. It was contended in favour of the parish of *W.*, that this was a voluntary grant, and that it had never been doubted but that a certificated person could gain a settlement by a residence on his own estate, whatever the value may be, and that, therefore,

a certificated as well as an uncertificated person, who is in possession of an estate which he does not acquire by purchase for money under 30*l*., gains a settlement by a residence thereon for 40 days. — THE COURT was of opinion that it was incumbent on the parish of *W.* to show that this was a voluntary grant before they could get rid of the certificate. — But upon the point respecting the construction of the 9 & 10 *W.* 3. *c.* 4. ASHHURST J. said, If it were necessary to give any opinion upon the point, whether, supposing this to be a voluntary grant, the party would gain a settlement, I should have wished the matter to have undergone further discussion. It seems extraordinary, that in the teeth of an act of parliament this matter should have been taken for granted; nothing can be stronger than the words of the certificate-act, which says, "Whereas some doubts have arisen upon the construction of the "said act, (meaning the 8 & 9 *W.* 3. *c.* 30.) by what acts any "person coming to inhabit or reside, within any parish, by virtue "of any certificate, may procure a legal settlement in such parish, "&c. be it enacted, &c. that no person or persons whatsoever, "who shall come into any parish by any such certificate as afore-"said, shall be adjudged by any act whatsoever to have procured "a legal settlement in such parish, unless he or they shall really "and *bonâ fide* take a lease of a tenement of the value of 10*l*., or "shall execute some annual office in such parish, being legally "placed in such office." It is singular that a practice should have prevailed in opposition to this act of parliament, when the words are so strong. — BULLER J. I reserve to myself the consideration of the question, what effect a voluntary gift would have on a certificate-person as to the giving of a settlement. I agree that under the act of 9 *G.* 1. the word "*purchase*" has not the same extensive sense as is generally annexed to it. But no case has been cited at the bar, where a certificate has been discharged by a voluntary gift. I am aware of the case of *Rex* v. *Ingleton* (*a*), but that was not argued; it was given up under the idea that it was governed by *Rex* v. *Marwood* (*b*), which was not the case of a certificated man.

(*a*) *Ante*, pl. 621.

(*b*) *Ante*, pl. 615.

688. *Rex* v. *Ufton*, *E. T.* 29 *G.* 3. 3 *T. R.* 251. — *J. H.*, the pauper, originally settled at *U.*, came to reside with his father, *J. H.*, about 23 years ago, on a cottage and premises at *M.*, which his father had occupied several years. By indenture, or deed of feoffment, dated 10th of *October* 1766, with livery of seisin indorsed, and duly executed, in consideration of natural love and affection, and of 10*l*. to him paid by the pauper, *J. H.* the father granted, enfeoffed, and confirmed the said cottage, &c. to the pauper in fee. About three years and a quarter afterwards the pauper obtained from the parish of *U.* a certificate, dated the 1st of *January* 1770, duly signed, certified, and allowed, acknowledging that he and his wife and family were inhabitants legally settled in *U.* And the pauper afterwards occasionally received relief from *U.* during his residence in the cottage at *M.* The father of the pauper lived with the pauper upon the premises till his death, which happened about eight years ago. The pauper was his eldest son, and heir at law, and continued to reside upon the premises until the year 1788. The pauper by lease and release, dated the 15th and 16th of *February* 1788, conveyed the same premises to *S.* for 50*l*., which sum appeared upon evidence

A certificate granted to a son, after his father has conveyed to him an estate in fee, is discharged by the son afterwards residing 40 days on the estate.

to be a satisfation for a debt due for necessaries provided by *S.* for the pauper and his family, and for money lent. The pauper being afterwards turned out of possession by *S.*, to whom after the sale he had become a tenant, returned to *U.*, and was removed to *M.* One of the points made at the bar was, that admitting that this was an estate sufficient to gain a settlement in *M.*, yet that the certificate granted by *U.* had stopped them from saying that the pauper was not legally settled there. — THE COURT were of opinion, that this being a donation from the father to a son, was clearly not a purchase within 9 *G.* 1. *c.* 7., notwithstanding part of the consideration was in money; and said, that not the smallest doubt could be entertained on the other point; for though the certificate was conclusive at the time, it was afterwards done away by the pauper's residence on his own property at *M.*

CHAPTER IX.

OF PERSONS IRREMOVABLE UNTIL CHARGEABLE.

I. *The Statutes.*
II. *Who shall be deemed chargeable.*
III. *How the Settlements of such Persons may be inquired into.*

I. *The Statutes.*

9 & 10 *W.* 3. *c.* 11. 22 *G.* 2. *c.* 44. 13 *G.* 3. *c.* 84. § 56. 24 *G.* 3. *c.* 3. 24 *G.* 3. *c.* 6. § 4. 26 *G.* 3. *c.* 107. § 131. 33 *G.* 3. *c.* 54. § 17. 35 *G.* 3. *c.* 101. 35 *G.* 3. *c.* 124.

II. *Who shall be deemed chargeable.*

A certificated person who receives relief during illness from a parishioner, does not thereby become actually chargeable to the parish, although the parish-officers reimburse the parishioner. S. C. Say, 283.

689. REX v. *Kingswood, E. T.* 29 *G.* 2. *Burr. S. C.* 392. — The case stated was: — That *A. T.*, father of the pauper *E. T.*, was born and bred in *K.*; and went afterwards into *W.*; where he lived till the time of his marriage with *A.* his wife: that upon or soon after the said intermarriage, and before the birth of the pauper *E.*, the churchwardens and overseers of the poor of the parish of *K.* gave a certificate to the churchwardens and overseers of the poor of *W.*, thereby acknowledging the said *A. T.* and his said wife to be inhabitants legally settled in the said parish of *K.*: that the said *A. T.* and his said wife lived in *W.* under the said certificate from the time of the giving thereof until the time of the death of the said *A. T.*; and during that time had issue the pauper and three other daughters, all born in *W.*, and who lived with their father and mother there, from the time of their respective births till the time of the death of the said *A.*; and from that time, with their said mother, in the same parish, until the time of the said pauper's removal by the said order of the said two justices; and never gained any legal settlement therein. That about nine years ago, one of the said daughters (not the pauper) being taken ill of the small-pox, she the said *A.* applied to one of the churchwardens or overseers of the said parish of *K.* for relief on that account; who promised her she should have relief: but that she the said *A.* never saw or heard from him from that time till after her family were recovered of that distemper. That in a day or two after such the aforesaid application, the pauper also sickened of the small-pox, and was thereupon, as were also her said sister, who before had sickened as aforesaid, and two other sisters, removed to a house which had been provided by the officers of *W.* for the reception of persons paupers of *W.* then and there ill of the small-pox; where they the said pauper and her said sisters had, and recovered of, the said distempers, and that, during all that time, all necessaries were provided for the said pauper *E.* and her said sisters, by one *M.*, an inhabitant (but not an officer) of *W.*, who provided likewise for the other persons paupers of *W.* then sick of the small-pox in the same house: and that the said *Mourral* after-

wards declared, "He had been paid for the said provision and "maintaining of the said *E. T.* and her sisters during such their "illness;" but by whom did not say. That the said *A. T.*, during the time of such illness, rented a house at *W.* aforesaid, where she and her said daughter might have lived; but were removed to the house aforesaid, to prevent the spreading of the said distemper. And that the said *E.*, from and after the time of her recovery, supplied herself by her own labour with clothes and provisions, but lived in the same house with her said mother. And that the said *A. T.* or *E.* the pauper, or any of the said *A.*'s family, never received any other relief either from the officers or inhabitants of *W.*, at any other time or in any other manner than as aforesaid, save 1*s.* received by the said *A.* from the said *M.*, about 10 days after her family's recovery of the said distemper as aforesaid; she being then in great want: which the said *M.* also declared "he was repaid;" but did not say by whom. — So that, though the order of Sessions states a special case, whereby it appears that she was a certificated person from *K.* to *W.*; yet it did not (as Mr. *Gould* objected) sufficiently state an actual relief received from *W.*; it only states that a person did expend money for her relief, and was repaid the same: but does not say by whom the money was repaid. — THE COURT held that it did not at all appear that this person was ever actually chargeable, and that she had therefore been improperly removed: and both orders were quashed.

It is only the person who asks relief that is chargeable.

690. *Rex* v. *Framlingham*, *T. T.* 13 *G.* 3. *Burr. S. C.* 748. — Two justices removed *S. C.*, his wife, and their three children, from *M.* to *F.* They had come from *F.* to *M.* with a certificate, under which two of the said children were born. The other daughter, who was 18 years of age, while she was residing in her father's house in *M.* as part of his family, by reason of her being then big with child, and which child was afterwards born a bastard in the parish, applied to the parish-officers of *M.* for relief, her father not being able in point of circumstances to assist her. The parish-officers, upon her asking relief, gave her 2*s.*, and then immediately obtained the present order of removal, and sent the whole family back to *F.*; and the Sessions confirmed the order. It was contended that by the 8 & 9 *W.* 3. *c.* 30. the parish who gave the certificate is obliged to receive back the person or persons mentioned in it, "whenever *he*, *she*, or *they* shall become chargeable;" that it is not necessary that all of them should ask relief; but that if relief be asked by any *one* of the family, the whole family may be removed. The orders were quashed on another point; but ASTON J. said, that he was inclined to be of opinion, that if several persons reside in a parish under the same certificate, the asking relief by a *single one* of them would *not* render the rest removable. The certificate-act, 8 & 9 *W.* 3. *c.* 30. *s.* 1., says, "that the parish "who gives the certificate shall receive and provide for the person "mentioned in it, together with his family, whenever he, she, or "they shall happen to become chargeable, or ask relief: and *then*, "and *not before*, it shall be lawful for any such person, and his or "her children, to be removed to the parish from whence such "certificate was brought." And it must be *adjudged* by the justices, that such person *is actually become chargeable*, before they can legally make an order of removal. Now, how can the justices

be authorized to make such an adjudication upon a person who, in fact, is *not* become chargeable, *nor ever has asked relief*?

691. *Rex* v. *St. Peter and St. Paul, Bath, T. T.* 22 *G.* 3. *Cald.* 213.— The parishioners of the parish of *St. P.*, in conjunction with the parishioners of the parish of *St. J.*, some time since purchased a piece of ground situate in the parish of *L.*, and built thereon a house for the reception and maintenance of the poor of the several parishes of *St. P.* and *St. J.* there. In *September* last, the pauper, *H.*, being impotent and unable to work, was, together with all the other paupers belonging to the parish of *St. P.*, removed from that parish to the said new-erected house in *L.*; where he and the rest of the poor of that parish were maintained at the expence of the parish of *St. P.*, and without any charge to the parish of *L.* *H.*, and all the other paupers, who went into the new-built house, carried with them certificates directed to the parish of *L.*, signed by the parish-officers of *St. P.*, and allowed by two justices of the peace as the statute directs, acknowledging the paupers to be settled inhabitants of the parish of *St. P.*, and which were delivered to one of the officers of the parish of *L.* Notwithstanding the certificate of the pauper *H.*, the parish-officers of *L.* obtained the order in question for his removal, though he had not been chargeable to their parish. The Sessions confirmed the order, &c. being of opinion, that the pauper was not the object of the certificate-act, and, consequently, not protected by it.—It was insisted, that the pauper was not within the 9 & 10 *W.* 3. *c.* 11., for that the pauper was expressly stated not to be a skilful and able-bodied person who wanted employment, and was capable of labour, but a man impotent, and sent in such a helpless state for the very purpose of being provided for; that it was impossible, therefore, that any construction could be imagined, that would extend the provisions of this act, which had throughout so very different an aspect to the case of an impotent person coming with all the poor of his parish for the sole purpose of being maintained in another parish, total strangers, and altogether unconnected with them (*a*); and that nothing could be more idle than to contend, that this construction would defeat the salutary purposes of this act; as it was impossible to raise a doubt upon the existence of these powers in the hands of the inhabitants of any number of parishes that should agree to unite.—BUT THE COURT were of a different opinion, and both orders were quashed.

The poor belonging to one parish being under certificates in a workhouse situated in another, are not to be considered as chargeable because unable to work.

692. *Rex* v. *Gwenop, H. T.* 29 *G.* 3. 3 *T. R.* 133.— *T.* was a married man, and had a family, and had been drawn to serve in the militia, and was duly sworn, and served his full three years in actual service, and at the end of that time was discharged. His occupation was that of a husbandman, working at daily wages: his residence had been for some years in *P.*; and he had never been chargeable: his last legal settlement was in *G.* The question was,

A *husbandman*, though he has actually served in the militia, and is married, may be removed.

(*a*) Mr. Justice *Foster* appears to have inclined to this mode of reasoning in Rex *v.* St. George, Southwark, and afterwards, in Rex *v.* St. Olave, Southwark.— *Foster* J. very much doubted (though he gave no absolute opinion) whether a certificate, given for this particular purpose of admission into a hospital for cure, could be considered as a certificate under that act; which was made with a view to persons coming out of one parish into another, to get their livelihood by their work and labour. H. 22 G. 2. 1748, Burr. Sett. Cases, 285.

Whether, as he had served the three years in the militia, he was entitled to the privilege and benefit granted to militia-men under the statutes in that case made, and was, therefore, irremovable?—THE COURT OF KING'S BENCH were of opinion that the statutes 22 *G.* 2. *c.* 44. and 26 *G.* 3. *c.* 107. were made *in pari materia*; that the object of the legislature was to remove, as to such *mariners*, *soldiers*, and *married militia-men*, the impediments which 5 *Eliz. c.* 4. had created respecting their setting up trades; and that, therefore, it was *traders* alone, and not *husbandmen*, who were entitled to the privileges of inhabiting a place without being removed until they became actually chargeable.

A certificated person who never asks relief cannot be considered as actually chargeable.

693. *Rex* v. *St. Mary, Westport*(*a*), *H. T.* 29 *G.* 3. 3 *T. R.* 44.—*E. Pretty* (the grandfather of the pauper *T. Pretty*), together with his wife and family, went to reside in *B.*, under a certificate from *W.*, dated *June* 21, 1714, acknowledging them to be legal inhabitants of *W.*, and promising for themselves and their successors, the churchwardens and overseers of the poor for the time being, that they would receive the said *E. P.* with his wife and family, when they should be thereto requested, unless they, or either of them, should obtain a legal settlement elsewhere. The paupers resided together in *B.* under the certificate, till removed by the present order. *T.* the elder son of the pauper *T. P.*, some years ago married, took a house in the same parish, and resided apart from his father's family. He is since dead, and has left an infant son, *J.*, who now lives with his mother in *B.*, and is under the age of seven years. The paupers named in the order of removal never asked or received any relief from *B.*, or became personally chargeable, unless the pauper *E.*, under the circumstances hereinafter stated, can be so considered: but *T. P.*, the son, after the separation above-mentioned, asked and received relief from *B.* during sickness; and since his death his infant son has not been maintained by his grandfather the pauper, but relief has been applied for by his mother for him, and occasionally granted by *B.* for his support. *T.*, the grandfather, knew that relief was so administered. The pauper *E.*, at the time of her removal, was pregnant with a bastard child, of which she has since been delivered in *W.*—LORD KENYON C. J. The single question is, Whether these persons who have been removed can, in the fair sense of the words, be said to have been actually chargeable to the parish of *B.*? Now it is negatived by the case that any of these parties received relief in person. But it is contended, that they were virtually relieved, because the son and the grandson both received relief. But it must be observed, that at that time they were not members of the family of the *pater-familias* now removed; they lived apart from him, and formed another family of themselves. Then it has been said, that a burthen has been thrown upon the parish by the relief of the son and grandson, and, therefore, that the grandfather was virtually chargeable, because the 43 *Eliz.* requires fathers and grandfathers to support their children and grandchildren. But that proposition hastens to a conclusion too soon; for by that statute they are not, at all events, to maintain their grandchildren, &c. but only when they are of sufficient ability. Now the justices are the proper judges of that ability; and the grandfathers, &c. are only to be called upon by

(*a*) See Rex *v.* Tibbenham, *post*, pl. 696.

an order of justices. There is another section in the certificate-act (*a*) which throws some light upon upon this subject; that directs that every person who receives relief, *and the wife and children of such person, cohabiting in the same house*, shall wear a badge on the shoulder: this, therefore, is a strong legislative interpretation of what is meant by the word "family" in that act; and it would be a very harsh construction of that law, to say that the grandfather, when his son and grandson, who lived in a different house from him, received relief, could have been badged, or, as mentioned in the latter part of the same clause, sent to the workhouse. So that, on the fair construction of this act of parliament, none of the persons removed by this order can be said to have been chargeable: and even if we could exercise any discretion upon the subject, we should not be inclined to restrain the operation of the certificate-act. The case of *Walton* v. *Spark* is very distinguishable from the present; there, the condition of the bond, which was to indemnify the parish against the person therein named and his children, was broken. Then as to the circumstance of the daughter being with child; it is universally settled that that is not a sufficient ground for the removal of a certificated person. (*b*) Perhaps it is rather a hard case, and we might wish the law to be otherwise in some instances. But, indeed, it is to be considered that, though the woman was pregnant, *non constat* that the child would be a bastard; and though it was probable, yet it was not certain, that any burthen would have fallen on the parish, for she might have been married before she was brought to bed. — ASHHURST J. The persons mentioned in the certificate had a right to reside in *B.* under it till they became chargeable, when only the certifying parish could legally be requested to receive them. Then the question is, Whether or not any of the persons removed actually became chargeable in such a way as to warrant the parish of *B.* in removing them? Now it does not appear that any of them fall within that description. For as to the pregnancy of the daughter, it has been repeatedly determined, that a certificate person cannot be removed as being likely to become chargeable, but such person must be actually chargeable; and in such an instance as this the charge may be prevented by marriage. Then as to the relief which was given to the son and grandson; it seems to me that was not a sufficient ground to remove the grandfather and his family living under a separate establishment. But it has been said that the grandfather was bound to maintain his son and grandson; that is true under circumstances, but then he must be of sufficient ability, and called upon by an order. Now, here the relief was not given on the application of the grandfather; and in order to extend the consequences of this relief to him, the parish should have first called upon him, when, if he had refused, alleging his inability, it might have, perhaps, been tantamount to a relief of the grandfather. But as it appears here, we cannot say that it was a necessary act of the parish; it was a voluntary one; and, perhaps, the grandfather, if he had been applied to, might have relieved the son and grandson. — GROSE J. The question is, Whether that which is stated in the order of removal be true, namely, that the paupers were actually chargeable? Now that is negatived

(*a*) 8 & 9 W. 3. c. 30. § 2. repealed by 50 G. 3. c. 52.

But see Rex v. Great Yarmouth, *post*, pl. 694.

(*b*) But now, by stat. 35 G. 3. c. 101., unmarried women with child are deemed persons actually chargeable.

by the case, which states that they were not, in fact, chargeable, unless we can say that they were so in law. Although this question has never been expressly decided, I agree with the opinion delivered by ASTON J., who was particularly conversant with this branch of the law; and, notwithstanding it was extrajudicial, I cannot help paying a great respect to the opinion of so able a judge. If the whole of a certificated family were removable because one of them only became actually chargeable, it would be attended with great inconvenience. As, for instance, if there were three or four young men in the family who were able by their industry to procure a competent maintenance, and their sister became chargeable, it would be against the spirit of the act to make that a ground for removing them all. And I think the intent of the act will be fully answered by determining, that when any one of the certificated family becomes chargeable, he only shall be removed; any other determination would defeat the true purposes of the act. Then as to the pregnancy of the daughter, no case has been cited to show that a person under such circumstances can be removed, and I think she was not removable on that account.

Unmarried women, if pregnant, may be removed as chargeable, though residing under a certificate.

694. *Rex* v. *Great Yarmouth* (*a*), *M. T.* 39 *G.* 3. 8 *T. R.* 68. — Two justices, by an order, removed *M. P.*, widow, from *G. Y.* to *D.*; and upon an appeal, the Sessions quashed the order for informality, not stating any case for the opinion of this Court. But in the order of removal it was recited and adjudged, that the pauper was with child, which was likely to be born a bastard; that she was living in *G. Y.*, not having gained a settlement there; that she was deemed to be a person actually chargeable to the parish of *G. Y.*; and that her place of settlement was at *D.*; without negativing her having a certificate from any parish. Both the orders having been removed here by *certiorari*, LAW obtained a rule to show cause why the order of Sessions should not be quashed: against which MINGAY and HULTON now showed cause; who, after stating the question intended to be raised in this case to be, whether or not the statute 35 *G.* 3. *c.* 101. § 6. extends to an unmarried woman who is residing under a certificate, argued in the negative, because no mention is therein made of certificated persons, and because the object of that statute, in general, was to give privileges to paupers, not to take any away from them: that, therefore, this act ought not to be extended by implication beyond the words of it, in order to abridge the privileges of any pauper: that, if the act did not extend to certificated persons, the order of removal was defective in not negativing that the pauper was living at *G. Y.* under a certificate; for that in *Rex* v. *St. Mary Westport* (*b*), it was ruled that the pregnancy of a certificated person was no ground for removing her as a person actually chargeable, and, consequently, if this pauper were living under a certificate she was not liable to be removed. — PER CURIAM: The orders, which alone are before the Court, are scarcely sufficient to raise the question that, it is said, was meant to be agitated. But even if they were, this pauper comes within the words of the statute alluded to, which are general, "every unmarried woman," &c. and also within the reason of the act. This clause seems to have been introduced for the very purpose of remedying what was before an apparent defect in the poor-laws; for before that act passed, a certificated person in this situation could not have been

(*b*) *Ante*, pl. 693.

(*a*) See Rex v. Tibbenham *post*, pl. 696.

removed, although the child, when born, would be settled in the certificated parish. Therefore, as the words of the statute are sufficiently comprehensive to include this case, there is no reason why we should narrow or abridge the construction of them so as to prevent their extending to a case that wanted the remedy. — Rule absolute.

695. *Rex* v. *Alveley* (*a*), *E. T.* 43 *G.* 3. 3 *East*, 563. — Two justices, by an order, removed *J. H.*, single woman, from *K.* to *A.*; in which order it was stated, that upon the complaint of the churchwardens and overseers of *K.* unto the said justices "that *J. H.*, "*single woman*, had come to inhabit in the said parish of *K.*, not "having gained a legal settlement there, *and that the said* J. H. "*is with child, and is therefore* deemed chargeable to the said "parish of *K.*; they, the said justices, upon due proof made "*thereof*, as well upon the examination of the said *J. H.* upon "oath as otherwise, and likewise upon due consideration had of "the premises, did adjudge the same to be true, and did likewise "adjudge that the lawful settlement of the said *J. H.* was in the "said parish of *A.*" &c.; they did, therefore, require the said churchwardens, &c. of *K.* to convey and deliver, and the said churchwardens, &c. of *A.* to receive the pauper. The Sessions, on appeal, confirmed the order, subject, &c. The pauper was settled by birth in the parish of *A.*, and sometime previous to *Michaelmas* 1801 hired herself to *C.*, of *D.*, in the parish of *K.*, for a year, at the wages of 4*l*. She entered upon her service on the 1st of *October* following, and continued therein without interruption till the 2d of *September* 1802, when she, being about seven months gone with child, the parish-officers of *K.* insisted upon her going before two magistrates for the purpose of being examined as to the place of her settlement, and accordingly took her away from her service on the evening of that day, and the next morning brought her before the magistrates, who made the order of removal. The pauper's master had made no complaints against her: he did not consent to her being taken away, but objected to it; as did the pauper herself, who was perfectly able to do her work; and it being harvest time the master could ill spare her. After the pauper's examination had been taken, she returned to her master's service; and on the following day the parish-officers removed her under the order from *K.* to *A.*, telling her at the same time that she might return to *K.* The master also told the parish-officers that he should insist on the pauper's returning and serving out the rest of her year. The pauper accordingly returned to *K.* and served out the rest of her year, and received her whole year's wages. — PULLER, in support of the order of Sessions, contended that the pauper was removable by the express provision of the stat. 35 *G.* 3. *c.* 101. § 6., "that every unmarried woman with "child shall be deemed and taken to be a person actually chargeable within the true intent and meaning of this act to the parish, "&c. in which she shall inhabit, and may be removed as such to "the place of her last legal settlement," &c. Now the object of that act was to enable parishes to remove paupers not legally settled therein when they became actually chargeable, instead of removing them upon the supposition only of their being likely to be chargeable, as the law stood before the act. The necessity of

A *sing'e* woman living in service with her master is not removable even since the stat. 35 G. 3. c. 101. § 6. against the consent both of herself and her master; though adjudged by the order of removal to be *with child*, and *therefore* deemed chargeable to the parish in which she was serving; that statute not extending to make persons removable, who were not proper objects of removal before, but only to leave certain descriptions of persons excepted out of the act liable to be removed, though not in fact chargeable, if otherwise proper objects of removal.

(*a*) See Rex v. Tibbenham, *post*, pl. 696.

this clause was obvious, to prevent such persons having it in their power to settle their bastard children in the place of their birth, instead of in the parishes to which they respectively belonged, which is only provided for by the latter part of the clause, in case of the birth pending an order for the removal of the mother. The only case on this branch of the act is *Rex* v. *Great Yarmouth* (*a*), where the Court put a strict construction on the words of the clause, and held that they extended to a certificated single woman with child, though such a person was certainly not removable before that act, as was ruled in *Rex* v. *St. Mary Westport*. (*b*) If it be said that an order of removal cannot dissolve the contract between the master and servant, the answer is, that no private agreement of the parties can intervene to prevent the execution of a public law in a case falling within it. And in *Rex* v. *Kenilworth* (*c*), where a pauper was removed, by an order, out of the service of the master in the parish of *A.*, against which there was no appeal, it was holden to dissolve the contract of hiring for a year under which he was then serving; so that though he returned a few days afterwards to his master in *A.*, and served out his year, and received his full wages, he could not thereby gain a settlement. *Buller* J. there said, "that the order of removal put "an end to the service." And in a subsequent case, *Rex* v. *Fillongley* (*d*), where one residing on a tenement of 10*l.* a year was removed, Lord *Kenyon* distinguished it from *Rex* v. *Kenilworth*, because "that was a case of master and servant, and there the "justices have a power of putting an end to the contract." Then here, if the old contract were dissolved by operation of law, the service afterwards was under a new contract, and could not gain the pauper a settlement. — LORD ELLENBOROUGH C. J. If the order of removal were good, no doubt it would operate to dissolve the contract. In *Rex* v. *Kenilworth*, the order of removal being unappealed from, was, therefore, to be deemed a valid one: but this is now under appeal, and may be controverted. And that brings it to the question, Whether the order was properly made? Was it not the meaning of the act to prevent the removal of persons until actually chargeable, who were before removable, if likely to become so: but not to make persons removable who were not proper objects of removal before that act? Could it be meant that a person in this situation should be liable to be torn away from her parents, whatever her condition in life may be, and however far removed from any probability of being a charge on the parish? Is there any instance to be found in the books before this act, of a woman, under these circumstances, being a person of substance, and yet deemed to be removable? The substance of a person so situated repels the idea of her being chargeable; and the act did not mean to make any person removable who was not so antecedently to the passing of the act. The general provision is, that no person shall be removable till actually chargeable, and the sixth section introduces an exception to that general rule, leaving the persons so circumstanced to the operation of the law as it stood before the passing of the act. — The respondent's counsel observed, that there were no facts stated in the case to show that the woman was not a person who was likely to become chargeable at the time of the order made, or that the removing magistrates had not exercised their judgment

(*a*) *Ante*, pl. 694.

(*b*) *Ante*, pl. 693.

(*c*) *Ante*, pl. 455.

(*d*) *Ante*, pl. 901.

upon that fact: on the contrary, they adjudge her to be chargeable; and before the act in question, such a person was removable. — LORD ELLENBOROUGH C. J. There is nothing of that sort stated in the case, nor any thing in the order itself to show that the magistrates adjudged her to be chargeable otherwise than as a consequence of law in their understanding of the act of parliament: they adjudge *that she is with child*, "and is, *therefore*, "deemed chargeable to the parish of *K.*" But though the act says that such a person shall be "deemed and taken to be actually chargeable;" yet that must be understood *secundum subjectam materiam*, or as the act itself expresses it, "chargeable *within the* "*true intent and meaning of this act*," which I have before explained. It goes on to say, that such a person *may be removed* (*a*); *it does not say that she shall be so.* It lies then upon the respondents to show, that before this act passed the mere circumstance of a single woman in the service of another being with child operated as a dissolution of the contract, and made her liable to be removed against the consent both of the master and servant. — LAWRENCE J. Can be it be contended that a single woman in this situation, who was a person of substance, was liable to be removed before the late act? — LE BLANC J. The respondents must contend that a single woman within a week of the end of her service, upon being discovered to be three months gone with child, was a person likely to be chargeable. — GIBBS, *contrà*, after the opinion of the Court thus expressed, referred to *Rex* v. *Marlborough* (*b*), and *Rex* v. *Brampton* (*c*), as confirmatory of that opinion, that a single woman servant being with child was not a good cause of removal from the service by the overseers of the poor of the parish where she lives, though a good cause of discharge by the master. — PER CURIAM: Order of Sessions quashed. (*d*)

(*b*) *Ante*, pl. 423.
(*c*) *Ante*, pl. 444.

696. *Rex* v. *Tibbenham*, *E. T.* 48 *G.* 3. 9 *East*, 388. — The pauper was removed from *D.* to *T.*, by an order, stating her to be "*actually become chargeable to the said parish of D.*" The Sessions confirmed the order, subject, &c. The pauper's husband being settled in *T.*, went to the *East Indies* four years ago, and has never returned. At the time of the removal the pauper was residing in *D.*, and pregnant of a child, which has since been born a bastard in *T.* The pauper never received any relief from *D.* parish, nor was chargeable in any other manner than as abovementioned. Two points were made: first, if the pauper, *being married*, were removable, though pregnant, under 35 *G.* c. *c.* 101. Second, whether the pauper could be said to have been actually *chargeable* to the parish, from the mere circumstance of her having been pregnant with a bastard at the time. — FRERE, in support of the orders, cited *Rex* v. *Luffe* (*e*), on the first point; and distinguished this case from those of *Rex* v. *Great Yarmouth* (*g*), *Rex* v.

A *married* woman pregnant with a child, which, when born, would be by law a bastard, is removable as an *unmarried* woman, under 35 G. 3. c. 101. § 6. Being pregnant with a bastard is sufficient evidence of *chargeability* to warrant a removal; unless evidence to the

(*a*) But see Rex *v.* Tibbenham, *post*, pl. 696. where Lord *Ellenborough* disavows this observation.

(*d*) *Vide* Rex *v.* Ozleworth, Burr. S. C. 902, 4. where a servant who had contracted to serve his master for three years at so much a week under certain conditions was removed during the term, and while he was actually in his master's service, Lord C. J. *Lee* put an end to the argument upon the nature of the contract by saying, "How could the "justices remove him out of the ser-"vice? It appears that the man was "actually in the service at the time of "the removal." And the Court quashed the orders.

(*e*) *Ante*, pl. 508.

(*g*) *Ante*, pl. 694.

contrary be given; and the order of removal may charge such party generally as actually chargeable, without setting forth in what manner chargeable.

Alveley (*a*), on the second. — BOWEN *contrà* relied principally on the case of *Rex* v. *Alveley*. — LORD ELLENBOROUGH C. J. The first question is, Whether a married woman, who, in the absence of her husband abroad, is pregnant under such circumstances, as that the child when born would be deemed by law a bastard, be liable to be removed under the act of the 35 *G.* 3.? The act indeed says, "that every *unmarried* woman with child shall be "deemed and taken to be a person actually chargeable within the "true intent and meaning of the act," and removable: but the legislature had plainly in view, that every woman pregnant of a child, which was not protected by the matrimony of its parents, but would, when born, be a bastard, should be removable whether married or unmarried: for though the mother were married, yet if her child would by law be a bastard, she was in *pari jure* within the scope of this act, with an unmarried woman who was pregnant. The next question is, Whether the order of removal be good in the form of it? It states the complaint of the parish officers of *D.*, that *R.*, the wife of *J. K. is actually become chargeable* to their parish, &c.; and the justices upon due proof made thereof, adjudge the same to be true. The act says, that a woman under the circumstances I have stated, "shall be *deemed and taken* "to be a person *actually chargeable*," &c. Have not then the justices done enough in stating, that the pauper was "actually be-"come chargeable to the parish?" They are to draw the conclusion whether chargeable or not, and it is enough for them to state that conclusion upon the face of the order, without stating the premises on which it was founded. If that conclusion be disputed, the party is to appeal; and such appeal having been made, and the facts stated to us, it is to be seen whether the premises warranted the magistrates in drawing that conclusion. The legislature intended that an unmarried woman, or what is the same for this purpose, a married woman, under the circumstances I have mentioned, being with child, is *primâ facie* chargeable within the law: it raises a presumption of her being chargeable. But I say again, as I said before in *The King* v. *Alveley*, that if it appear that the woman is a person of substance, and that there is no pretence to say that she is likely to bring a burthen upon the parish, the act did not intend to make such a person liable to be removed. But it is made a presumptive chargeability, so as to put it on the party disputing it to show that she is a person of substance, or, as in the case of *The King* v. *Alveley*, a person under a contract of hiring and service with another at the time, so as to rebut the presumption. The only cases that materially affect the construction of the clause in question are, first, *Rex* v. *St. Mary Westport* (*b*), which was the case of a certificated person, who, under the stat. 8 & 9 *W.* 3. *c.* 30. was not removable till actually chargeable: and it was held that one of the family of the certificated person, being pregnant of a child likely to be born a bastard, was not removable under that act. The question was again made in the case of *The King* v. *Great Yarmouth* (*c*), after the passing of the stat. 35 *G.* 3., where the residence of a person so circumstanced under a certificate, was held to be no objection to her removal. It is not necessary here to affirm or to disaffirm that case, as it related to the certificate act. Then came the case of *The King* v. *Alveley*, where the principal point decided was, that a single woman being

(*a*) *Ante*, pl. 695.

(*b*) *Ante*, pl. 693.

(*c*) *Ante*, pl. 694.

with child did not operate such a dissolution of the contract of hiring and service, as to make her removable against the consent of herself and her master. The Court also said, I have no doubt, what is stated in the report respecting persons of substance not being within the views of the act of the 36 *G.* 3. But there is one observation attributed to me with which I cannot charge my recollection, and which, at any rate, I am not prepared to abide by, namely, that where the act says that such a person *may* be removed, it does not say that she *shall* be so. Now I do not think that the use of the word *may* there, as contradistinguished from *shall*, makes any difference in the sense. If the party come within the true intent and meaning of the clause as there described, I think the true reading of the words "*may* be removed," is, that she "*shall* be removed." All the statutes respecting the removal of the poor form together one system of law, and it is a condition precedent, if I may so say, that the persons to be subjected to their operation should be in the condition of poverty. When, therefore, the clause says, that unmarried women with child shall be deemed to be actually chargeable, &c. for the purpose of subjecting them to be removed, it means that persons so situated shall *primâ facie* only be deemed to be chargeable, and it still leaves it open to show, that the party is of substance, so as not to be within the scope and view of the poor laws. Therefore, whether in the form of the order it be said that the woman so circumstanced is deemed to be chargeable, or is therefore chargeable, or that she is chargeable, it is all alike, and equally good; and she must be presumed to be in the situation in which she is considered by the legislature as being, namely, as actually chargeable to the parish where she is inhabiting, and consequently liable to be removed, unless the contrary be shown. Here then it is sufficiently adjudged in the order that the pauper was actually chargeable, so as to make her removable under the act: and it appearing by the facts stated on the appeal, that though married, yet that her husband was abroad, and could not have been the father of her child; this was a *primâ facie* case to bring her within the sixth clause, and to show that she was actually chargeable within the meaning of the act: and nothing being shown to rebut that presumption, it remains presumptively established that the pauper was within the description of persons liable to be removed. — The other Judges concurring, both orders were confirmed.

697. *Rex* v. *Diddlebury*, *E. T.* 48 *G.* 3. 9 *East*, 398. — The point in this case was precisely similar to the second point of the case of *Rex* v. *Tibbenham*, *suprà*, except that the words of the order were "upon complaint, &c. that the pauper (a single woman) "*is, by being pregnant, deemed to have become chargeable* to the "parish," instead of "*upon complaint*, &c. that the pauper *is* "*actually chargeable* to the parish." And it was contended for the appellants (in addition to the arguments used in *Rex* v. *Tibbenham*) (*a*), that the order of removal was bad, inasmuch as it ought to have been alleged upon the face of it, that the pauper was actually chargeable in fact, and not merely as an inference of law, from the fact of her being pregnant.— LORD ELLENBOROUGH C.J. The premises are stated in the order of removal, as in the statute itself, from whence the conclusion is drawn; and, therefore, all is stated which the statute requires. — Both orders confirmed.

An order of removal founded on stat. 35 G. 3. c. 101. § 6. stating that A. E. was *by being pregnant, deemed to have become chargeable*, &c. is good.

(*a*) *Ante*, pl. 696.

A labourer employed by his master to drive his cart into a parish with one load and to return with another, and who broke his leg there by accident, which detained him for some time in such parish, by which he was relieved, is to be considered as *casual poor*, and as such is not removable either under stat. 13 & 14 Car. 2. c. 12. or the stat. 35 G. 3. c. 101.

(*b*) *Post*, pl. 676.

698. *Rex* v. *St. James's, in Bury St. Edmund's*, (*a*) *T. T.* 48 G. 3. 10 *East*, 25. — The Sessions quashed an order of removal from *St. J.'s*, in *B.*, to *I.*, made in the usual form, reciting (*inter alia*), "that *S. O.* did lately *come to inhabit* in the said parish," &c. subject, &c. The pauper being settled at *I.*, was employed on *December* 23, 1807, by *R. H.*, of *I.*, to drive a load of hay to *St. J.'s*, and to return with a load of muck. In loading the muck he fell and broke his leg. On *December* 24 two magistrates took the pauper's examination, made out the order of removal, and (the pauper being unable to be removed) suspended the execution by an indorsement on the back of the order. The pauper was attended by a surgeon by the order of the parish officers of *St. J.'s*, and the expence of 16*l.* 13*s.* was incurred for his cure and maintenance. On *April* 1, 1808, the pauper being able to move, the magistrates took off the suspension, and made the order for payment of the 16*l.* 13*s.* for the expences, by indorsing the same on the order of removal; and on the same day the order was executed, and the pauper conveyed to *I.* Against the order of Sessions, the word *sojourning* in *stat.* 35 *G.* 3. *c.* 101. was relied on, and *Rex* v. *Kingston* (*b*) was cited.—LORD ELLENBOROUGH C.J. The case has been very fully gone into, and if the Court thought that any further light could be thrown upon it, they would have been desirous of receiving it. But no doubt can be raised on the question. No person is removable from the parish where he is but by positive statute. In order, therefore, to see what that power is, we must trace it to the statute itself which confers it, the 13 & 14 *Car.* 2. *c.* 12. and that, after reciting that poor people endeavour to settle themselves in those parishes where there is the best stock, &c. and when they have consumed it, then to another parish, &c. says, that it shall be lawful, on complaint of the parish-officers, within 40 days after any such person *coming so to settle, as aforesaid, in any tenement under the yearly value of* 10*l.*, for any two justices of the peace of the division where any person likely to become chargeable to the parish shall come to inhabit, by their warrant to remove him to the place of his last legal settlement. The expression of *coming to settle* denotes that the party comes *animo morandi* or *manendi:* it may be for a temporary purpose, but still it must be understood that he comes to settle there. But how can it be said that the pauper went into this parish *animo morandi* at all? He went into the town with a cart load of hay, which he was to dispose of, and return with a load of muck; How then can it be said that he went there to settle? Then if he were not removable within the terms of the stat. 13 & 14 *Car.* 2., can we find any enlargement of the power of removal? The stat. 35 *G.* 3. has the words *inhabiting* or *sojourning:* but it would be an extravagant construction of either of those terms to say, that it meant to include such a case as this. Then, if the order be not warranted by either of these statutes, there is no authority for it, and the Sessions have done right to quash it. — GROSE J. It is impossible to say that the pauper became removable by the stat. 35 *G.* 3., which was passed for the purpose of preventing poor persons from being removed till they were actually chargeable, who were before removable under the stat. 13 & 14 *Car.* 2. from the parish into which they had come to

(*a*) See Rex v. St. Lawrence Ludlow, *post*, pl. 703.

settle in a tenement under the yearly value of 10*l.* upon being likely to become chargeable. A man coming into a town with a cart, for an hour, to dispose of his load, cannot be said to have come there to *settle*: but having met with an accident there which detained him, he comes within the description of casual poor, and as such was neither within the stat. 35 *G.* 3. nor that of the 13 & 14 *Car.* 2., and therefore the original order was improperly made. — LE BLANC J. Whether ultimately it might be better either for the poor or for parishes to consider persons of the description of this pauper as removable, I cannot say; I should hope that it would not make any difference in the treatment which poor persons in their necessities should experience; but we can only look to the authority which the magistrates had to remove the pauper. Their power, if any, must be derived either from the stat. 13 & 14 *Car.* 2. or the stat. 35 *G.* 3. It has been properly admitted that the latter of these did not enlarge the power of removing poor persons, but was meant to provide that persons who by law were before removable if likely to become chargeable, should not be removed till actually so; and to make provision for suspending the order of removal when made, in cases of sickness or infirmity, and that the expences incurred in the care and maintenance of the persons, between the order to remove and the actual removal of them, should be defrayed by the parish to which they should be found to belong. We must then look to the stat. 13 & 14 *Car.* 2. Consistently with that statute, which enables the order of removal to be made, on complaint of the parish officers, of persons coming to settle and inhabit in the parish, the form of the order states the complaint of the parish officers of *St. J.*'s, that the pauper came to *inhabit* in their parish; (and without such complaint the justices would have no jurisdiction). The question then is, Whether this pauper came to settle or inhabit in the parish? The case shows that he did not; for it states the particular object of his coming there to be to drive a load of hay, and return with a load of muck; therefore under the statute of *Car.* 2. he could not lawfully be the object of complaint of the parish-officers, and if not, the magistrates could have no power to remove him. This question, though glanced at, did not arise in *The King v. Keynaston.* (*a*) — BAYLEY J. The statute 35 *G.* 3. was clearly intended to restrain the power of removal, and not to make persons removable who were not so before. Then the stat. 13 & 14 *Car.* 2. only gives the magistrates power to remove persons who come to settle and inhabit in a parish. Before that statute a settlement was gained by mere inhabitancy; now it is clear that this pauper did not come to inhabit in the parish from whence he was removed. And as down to the period of the stat. 35 *G.* 3. it never was considered that a person, coming into a parish for such a purpose as this pauper did, came there to inhabit, or was removable, therefore, since the statute which was passed to restrict the power of removal, he cannot be considered as a person removable. — Order of Sessions quashed.

(*a*) *Post*, pl. 876.

An order of removal, merely adjudging that the person removed, was *with child, and*

639 *Rex* v. *Holm East Waver Quarter*, *T. T.* 49 *G.* 3. 11 *East*, 381. — *E. M.*, single woman, was removed by an order of justices from *O.* to *H.*; on appeal to the Sessions, the order having been confirmed, was now removed to this Court by *certiorari*, and after the usual direction, run thus; "Upon complaint of the church-

unmarried, without drawing the conclusion that she was *chargeable*, is bad.

"wardens and overseers of the poor of *O.*, &c. unto us, &c. being "two of his Majesty's justices, &c. that *E. M.*, single woman, "hath come to inhabit in the said *O.*, not having gained a legal "settlement, nor produced any certificate owning her to be set- "tled elsewhere, and *that the said* E. M. *is with child and unmar- "ried*; we, the said justices, upon due proof thereof made, &c. "and likewise upon due consideration had of the premises, *do "adjudge the same to be true*; and we do likewise adjudge that "the lawful settlement of the said *E. M.* is in the said *H.*," &c. And so it proceeds to direct the removal of the pauper from the one *Quarter* to the other. The objection taken to the order below, which *Topping* was now prepared to support, was, that it was defective in not stating that the pauper was *actually chargeable*; and that it was not sufficient merely to state, as it did, that she was *with child, and unmarried*; for that might still be true, and yet the woman might have sufficient substance of her own, or ample security be given by others to preclude the least risk of her becoming an actual burthen to the parish; and the case of *Rex* v. *Alveley* (*a*) was relied on. — SCARLETT and PALEY, *contrà*, cited *Rex* v. *Matthews* (*b*), *Hobey* v. *Kingsbury* (*c*), *Rex* v. *Great Yarmouth* (*d*), *Rex* v. *Tibbenham* (*e*), *Rex* v. *Diddlebury*. (*g*) — LORD ELLENBOROUGH C. J. If it were an irrefragable conclusion, that, being a single woman, and with child, the party removed must be deemed to be chargeable within the meaning of the statute, then this order would be good: otherwise the justices ought to have drawn that conclusion, in order to show that, in their judgment, she was a proper object of removal within the poor laws. But, consistently with this order, the party might have been a single woman worth 10,000*l.*, or she might have given the most ample security to the parish against any charge which could be thrown upon them. The statute in question first gives the general rule, that no person shall be removed before they are actually chargeable. It then says, that single women with child shall be *deemed and taken* to be actually chargeable within the true intent of the act. But still the justices ought to draw the conclusion that she is within that general rule; otherwise it would come to this, that every single woman with child, whatever was her substance, might be removed by the parish-officers. Being unmarried, and with child, such a person is presumptively chargeable, from the strong probability of the fact that she must be so; but there may be circumstances, such as the substance of the party, or the giving a complete indemnity to the parish, which may exclude that presumption. Now every circumstance of that sort might have existed in this case, and yet the order, as it is framed, be true: in *The King* v. *Diddlebury*, the justices *deemed* her to have become chargeable; but she could not be *deemed* to be chargeable, if those circumstances had existed in her instance. It ought to appear by the order that the justices have exercised their judgment on the matter, and repelled the existence of such circumstances by their adjudication that she was chargeable, in order to show that she was a proper object of removal within the meaning of the law. — GROSE J. The legislature never meant to say, that at all events an unmarried woman with child shall be removed as chargeable; but only to state the circumstance of such a person being with child, as evidence that she was charge-

(*a*) *Ante*, pl. 695.
(*b*) *Ante*, vol. i. pl. 615.
(*c*) *Post*, pl. 851.
(*d*) *Ante*, pl. 694.
(*e*) *Ante*, pl. 696.
(*g*) *Ante*, pl. 697.

able, unless repelled by other facts to show that she was not. The justices, therefore, ought not to have barely stated the fact of her being with child, but to have drawn the conclusion that she was chargeable, to show that she came within the meaning of the poor laws. — LE BLANC J. The order of removal is defective; the act of parliament only gives a power to remove persons who are actually chargeable; the justices, therefore, must find that the party is chargeable before they can remove her. But the act has made the circumstance of an unmarried woman being with child evidence of her being chargeable; the justices, therefore, should have adjudged upon that circumstance; instead of which, they have merely found the fact, but have not drawn the conclusion. — BAYLEY J. Before the statute of the 35 *G.* 3. it was essential for the justices to have adjudged that the party removed was likely to become chargeable, in order to give them jurisdiction to remove her; but by this statute another rule is given, and it is not sufficient that the party is likely to become chargeable, but they must be actually chargeable before they can be removed. To avoid, however, the inconvenience likely to ensue from the application of the general rule to the case of a single woman with child, the act has made that circumstance *primâ facie* evidence, on which the justices are to decide; and many cases may exist, as those put by my Lord, of the substance of the party, or of an indemnity to the parish, which may rebut that presumption. Here the order only states the fact of the woman being a single woman, and being with child; and does not go on farther to draw the conclusion of her being chargeable. If, then, there may be cases where a woman, though single, and with child, may not be removable, as not being chargeable within the meaning of the law, the order is clearly not sufficient, but the justices ought to have gone on to draw the conclusion. In the cases of *Tibbenham* and *Diddlebury*, the Court considered the 6th section of the act as giving a rule of evidence only. — Order of Sessions quashed. — SCARLETT then observed, that the magistrates had been misled by following the precedent stated in a new edition of *Burn*, published since the statute, and since the author's death.

700. *Rex* v. *Birmingham*, *T. T.* 51 *G.* 3. 14 *East*, 251. — Removal from *F.* to *B.* Order confirmed, subject, &c. The pauper was resident in *I.*, and renting a house there, and receiving relief from that parish. Upon applying, as usual, for this relief, it was refused her, and she was desired to go to the officers of *F.*, an adjoining parish, in which some of her husband's relations had resided. This she did, and was by the officers of *F.*, refused relief, and sent back to *I.* Upon her return to *I.*, and again applying to the officers of that parish for relief, they refused relief, and desired her to apply again to *F.*; and when she expressed an unwillingness to do so, one of the overseers of *I.* took her, without any order of removal, to the parish officers of *F.*, and told her not to return again to *I.* Upon her being thus brought to *F.*, the officers of that parish relieved the pauper, and at the same time threatened to send her to prision if she returned to *I.* The pauper was, however, still desirous of returning to her house in *I.*, but was prevented from doing so by the threats of the parish officers of *F.* Under the above circumstances she remained in *F.*, where she had previously no place of abode, for eight or ten days; at

A pauper renting a house in the parish of A. where she received occasional relief, and having relations in B an adjoining parish, but no settlement in either, after having been sent backwards and forwards from one to the other, was at last taken by the parish-officer of A into B, by which she was then relieved,

and threatened to be sent to prison if she returned again into A: Held, that her residence in B, under such circumstances, did not prevent her removal from thence by an order of justices to her place of settlement.

the end of which time she was removed, by order from *F.* to *B.* The question was whether the pauper, being in *F.* under the circumstances above mentioned, was liable to be removed to the place of her settlement. — Against the order of Sessions, *Rex* v. *St. James's in Bury St. Edmund's* (*a*), was cited. — LORD ELLENBOROUGH C. J. That was a very different case; but this was the case of a starving vagrant, in whichever of the two parishes she was, who was going backwards and forwards between them, and would have been starved if she had not received temporary relief from one or the other. She was liable to be removed from either. How then can this oscillation between the two parishes affect the order of removal to her proper parish? — Orders confirmed.

Where a son, having agreed to purchase a piece of land for 65*l.* applied to his father, who consented to advance 20*l.* left to his wife, on condition that a house should be built on the land by the son, which the father and mother were to have for their lives and the life of the survivor, and afterwards the same to go to the son, but the father and mother were not to sell or dispose of it, nor to take any other family into the house; but this agreement was only by parole; and afterwards the father advanced the 20*l.*, and the son completed the purchase, and the land was conveyed to him in fee; and he built a house, of which the father and mother took possession with his consent, and lived in it for three years,

701. *Rex* v. *Standon*, *E. T.* 54 *G.* 3. 2 *M.* & *S.* 461. — Removal from *E.* to *S.* Order confirmed, subject, &c. — The pauper is the widow of *J. F.*, deceased, who about five years ago was settled at *S.* About that time their eldest son agreed to give 65*l.* for a piece of land, situate in *E.*; but not having sufficient money himself, he applied to his father, who consented to advance 20*l.* (which had been left to his wife) upon the following conditions; *viz.* that a house should be built by the son upon the land, which the father and mother were to have for their lives, and the life of the survivor; after whose death the same was to go to the son; but it was also agreed, that the father and mother were not to sell or dispose of the place, nor to take any other family into the house. The father was at that time advanced in years, and the son wished to show his good will towards him and his mother, and to assist them all he could. This agreement was not reduced into writing; but the father having advanced the 20*l.* to the son, the whole 65*l.* were then paid by the son for the purchase, and the land was conveyed to the son in fee. The house was built immediately afterwards at the son's expence, but the father assisted personally in building it. When finished, the father and mother took possession of it with the consent of the son, who did not think himself at liberty to turn them out; nor did he ever attempt to do so. The son lived in another house, and his father and mother paid no rent to any person; and after having resided in the house about three years, the father *died*, and the mother continued to live in it as before, with the son's consent, until her removal, under the order, to *S.* — LORD ELLENBOROUGH C. J. It appears clearly from the very learned and ingenious argument with which the case was opened, that no estate, either legal or equitable, was conveyed to the father or mother, nor any such interest probably as a court of equity would have decreed to be conveyed. They had nothing more than a conditional and qualified licence by parol to occupy, irrevocable perhaps, except on breach of the condition not to let in any other person. This is not like the case of a devise; here is no gift or grant of an interest in the land; and the parties seem to have been aware of that, for they stood by and suffered the whole to be conveyed to the son, resting merely on his parol licence that they should live there. — LE BLANC J. The ground on which this case is rested is, that the party cannot be removed from his own estate. The cases decide, that if the party has clearly an

(*a*) *Ante*, pl. 695.

equitable estate he shall not be removed from it. But the Court must see clearly, that he has an equitable estate, which would be perfected in him by the intervention of a court of equity. I think the argument here has failed in showing that these parties could, by resorting to a court of equity, have obtained a conveyance of the legal estate. — Order of Sessions confirmed.

without paying any rent, when the father died, and the mother continued in possession: Held, that the father did not gain a settlement by the residence on the land, nor was the mother entitled to reside on it irremovably.

702. *Rex* v. *Penryn*, *M. T.* 57 *G.* 3. 5 *M.* & *S.* 443.—Upon appeal, the Court of Quarter Sessions quashed an order for the removal of *M.*, and *E.* his wife, from *P.* to *C.*, subject, &c. The pauper being legally settled in *C.*, went with his wife several years ago to *P.*, and resided there, occupying four rooms at the yearly rent, and of the value of 4*l.*, part of a large dwelling-house of the yearly value of 18*l.* and upwards. The other parts of the dwelling-house were occupied by several other tenants, two of whom also paid 4*l.* a year each for their respective apartments. This dwelling-house, had but one outer door, and one staircase, and each tenant kept the key of his own apartment. For three years and upwards, immediately preceding the date of the order of removal, the pauper was rated to the church and poor rates for the whole house, and paid the same; and they were allowed to him out of his rent, except in one instance. While he was thus rated he occupied no other property than the four rooms, and had no concern with or controul over the remainder of the house, and during the whole time he was so rated, he resided in the said rooms. — LORD ELLENBOROUGH C. J. It will be vain for the legislature to make general enactments, if such enactments are to be explained away, and their operation defeated by nice distinctions. The stat. 35 *G.* 3. *c.* 101. *s.* 3. in the first instance prevents any person from gaining a settlement by delivery, and publication of notice; in the next place, the statute prevents any person from gaining a settlement by being charged with, and paying his share towards the parish taxes, in respect of any tenement not being of the yearly value of 10*l.* This enactment was undoubtedly meant to abrogate this head of settlement, and the authorities upon it, which, perhaps, had been carried to some degree of absurdity. Lord *Kenyon* appears so to have considered the operation of the act, and I am glad that we have his authority for it. If this construction of Lord *Kenyon* had not been felt to be the correct one, I doubt not that we should have had some observation upon it, from the learned reporter with whom the act originated, and which is generally known by his name. — ABBOTT J. I am of the same opinion. This act prevents the removal of any person before he is actually chargeable. This rendered it expedient to do away with settlements by notice, or paying rates for tenements of very small value. PER CURIAM: — Order of Sessions quashed.

A person occupying at 4*l.* a year part of a dwelling-house of the annual value of 18*l.*, does not since 35 G. 3. c. 101. § 4. acquire a settlement, although he be rated and pay to the church and poor rate for the whole house.

703. *Rex* v. *St. Lawrence, Ludlow*, *T. T.* 2 *G.* 4. 4 *B* & *A.* 660. — Two justices removed *T.* from *St. L.* to *S.* The Sessions, on appeal, discharged the order, subject, &c. On the 31st of *October* 1818, *T.*, the pauper, was sent with his master's team for coals, and on the road, in the parish of *B.*, was thrown down by the horses, by which means his thigh was fractured. The accident took place about half a mile from *St. L.*, in the parish of *B.* A person passing by with an empty waggon took the pauper to *St. L.*, to

Where a pauper legally settled in the parish of A, having met with a severe accident in the parish of B, was carried into an adjacent

parish to be cured, and remained there for a long period of time: Held, that he was to be considered as casual poor in the parish of *C*, and was irremovable; and that an order of removal to *A*, suspended under the powers of 35 G. 3. c. 101., and a subsequent order on the overseers of *A* to pay the intermediate charges incurred by the parish of *C*, were invalid.

(*a*) *Ante*, pl. 698.

the *Bell* Inn, which is in the parish of *St. L.*, where the pauper was taken in, and where he remained for the space of 14 weeks, during which time he was attended by a surgeon, who reduced the fracture. The overseers of *St. L.* came to the *Bell* the same day, and examined the pauper, and directed the mistress of the house to take care of him. they also were present when the surgeon was there. On the 4th *November*, an order of removal was made by the magistrates, removing the pauper to the parish of *S.*, his place of settlement. There was also an order of suspension made at the same time. On the 17th *July* following, an order for the charges incurred by *St. L.* was made, under the power given by the 35 *G.* 3. *c.* 101. It was objected that, under the facts above stated, the magistrates had no power of removal, and the Sessions being of that opinion, discharged the order. — ABBOTT C. J. I am of opinion, that in this case the Sessions were right in holding that the pauper was irremovable. The case of *Rex* v. *St. James', in Bury St. Edmund's* (*a*), seems to me to have been most correctly decided, and I do not think the present case materially distinguishable from it. But it is said, that *Rex* v. *Birmingham* is at variance with its authority. I am not of that opinion; but if it were necessary to decide between the two cases as conflicting authorities, I should adhere to the opinion of the Court in *Rex* v. *St. James, in Bury St. Edmund's*. For the statute 13 & 14 *Car.* 2. *c.* 12. only gave a power of removal of those paupers who were coming to settle. Now how can it be said that this pauper was coming to settle in *St. L.*? Nor does the 35 *G.* 3. *c.* 101. make any difference; for previously to the passing of that act, a pauper, under these circumstances, could not have been removed. And that act only regulated the powers of removal already existing, but did not give any new power to the magistrates for removing paupers who were irremovable before. The order of Sessions is, therefore, right, and must be confirmed.—Order of Sessions confirmed.

A hired a house for 10*l.* a year, and put into it his furniture, worth above 15*l.*, and lived in it above a year. Having applied for relief, the parish officers were compelled by a magistrate's order to grant it. After the relief was granted, the landlord demanded his rent, but allowed *A* a fortnight's time to pay it. Before that time expired, and before the rent was paid, the

704. *Rex* v. *Hampthill*, *E. T.* 5 *G.* 4. 2 *B.* & *C.* 847. — Upon appeal, against an order made on the 5th day of *August* 1823, for the removal of *J. A.*, with his wife and children, from *St. B.* to *A.*, the Sessions confirmed the order, subject, &c. The pauper, a ropemaker, being previously settled by estate in the parish of *A.*, came with his family, at *Midsummer* 1822, to reside in a house in the parish of *St. B.*; he had hired it of one *M.*, for 10*l.* a year; he put his own furniture into it, worth 15*l.* or 16*l.*; he continued to live in it above a year, and in *July* 1823, being much distressed, he applied to the parish-officer of *St. B.* for relief, who refused to give him any, but afterwards, in obedience to the order of a magistrate, gave the pauper 14*s.*, on the 31st of *July*. The day after this relief was given, *M.* called for his rent of 10*l.*, but gave the pauper a fortnight to pay it. On the 5th of *August* the pauper and his family were removed to *A.* He then applied to one *F.*, an auctioneer, to buy his furniture, to enable him to pay his rent. *F.* went to *C.*, valued it at 13*l.* 3*s.* (exclusive of his tools, which were worth 5*l.*), and agreed to buy them for 10*l.*, which sum he paid to the pauper, who kept the key of the house all the time, and returned to it about the 14th of *August*, on which day *M.* had sent a person to distrain for the rent, but no distress was taken, because the bailiffs, *F.*, and the pauper went together to *M.*, and the rent was paid by the pauper with the 10*l.* he received from *F.* Another

auctioneer had been employed to sell some of the furniture, under the direction and according to the inventory of *F.*, and sold it for 3*l.* 19*s.*, and after this sale, the remainder of the furniture and the tools might be worth 6*l.*; without the tools, the remaining furniture might be worth 1*l.* The Sessions decided that the house was not of the annual value of 10*l.* — BAYLEY J. It is unnecessary to decide in this case whether, since the passing of the 59 *G.* 3. *c.* 50., a settlement is gained by residing on a tenement, for which an annual rent of 10*l.* is payable, but the annual value of which is less. But inasmuch as the earlier statutes required that the tenement should be of the annual value of 10*l.*, I am inclined to think that the 59 *G.* 3. *c.* 50., has not, by requiring that a rent of 10*l.* shall be paid, rendered the actual value immaterial. Without pronouncing any decision upon that point, I am of opinion, that at the time when this order was made (and the date of the order is very material), the pauper was removable, and that he had not then gained any settlement in the parish of *St. B.* It is said, that although he had, in fact, received relief from that parish, yet as he possessed property, he was not actually chargeable. But I think that, as the parish did not act fraudulently, and as they were compelled to grant him relief by an order of justices, the pauper is to be deemed as actually chargeable, and if so, then he was removable, under 35 *G.* 3. *c.* 101., although he had resided on the tenement more than 40 days. It is material to consider the history of the law with respect to this power of removal. By the 13 & 14 *Car.* 2. *c.* 12. § 1., upon complaint made to any justice of the peace, within 40 days after any person comes to settle in any tenement under the yearly value of 10*l.*, any two justices of the division where any person that is likely to be chargeable to the parish shall come to inhabit, are authorized to remove such person to such parish, where he was last legally settled. Under that statute, complaint must be made to a justice within 40 days after the party has come to reside in the parish. The 35 *G.* 3. *c.* 101. recites this act, and repeals so much of it as enables justices to remove persons likely to be chargeable, and enacts, that "no person shall be removed "from the parish where he shall be inhabiting, to the place of his "last legal settlement, until such person shall have become *actually* "chargeable to the parish in which he shall then inhabit;" and then two justices are empowered to remove such person in the same manner and subject to the same appeal, and with the same powers as might have been done before the passing of that act, with respect to persons likely to become chargeable. Now, taking these two statutes together, I think the meaning of them is, that the statute of the 35 *G.* 3. *c.* 101. takes away altogether the power of removing, within 40 days, persons likely to become chargeable, but gives the power to remove persons actually chargeable, at any time after they have become so, and before they have actually gained a settlement in the removing parish. I am of opinion, also, that on the 5th *August* 1823, when the order of removal was made, the pauper had not acquired any settlement in the parish of *St. B.* The statute of the 59 *G.* 3. *c.* 50. introduces new provisions with respect to the gaining of a settlement by renting a tenement. Before that statute any person renting a tenement, of the annual value of 10*l.*, and residing on it 40 days, obtained a settlement; but that statute enacts, that no person shall acquire a settlement by

pauper was removed to another parish by an order of two justices. After he had been removed, he sold his furniture, and paid the year's rent: Held, first, that the parish-officers having been compelled to grant relief, *A* had thereby become actually chargeable, and was therefore removable by statute 35 G. 3. c. 101., although he had resided above 40 days on the tenement: Held, secondly, that at the time when the order of removal was made, he had not gained any settlement in the removing parish, because he had not then paid a year's rent, as required by the 59 G. 3, c. 50.

reason of dwelling for 40 days, in any tenement rented by such person, unless such tenement shall be *bonâ fide* hired by such person, at and for the sum of 10*l.* a year at the least, for the term of one whole year, nor unless it shall be held, and the rent for the same actually paid, for the term of one whole year at the least, by the person hiring the same. Now in this case the pauper took the tenement at *Midsummer* 1822, for one year; the year expired, and the rent became due and payable at the expiration of that time; and if the pauper had made a legal tender of the rent upon the premises before sun-set or the last hour of the day when it became due, and had been able to show that he was always afterwards ready to pay it, possibly such a tender might have been considered in point of law as equivalent to payment. But in this case he had neither paid the rent nor done any thing which, in point of law, can be considered as payment, at the time when the order of removal was made. He had not done what was requisite, in order to give him a settlement, by the renting of a tenement, according to the provisions of the 59 *G.* 3. *c.* 50. The order of removal, then, was a valid order at the time when it was made, and the subsequent payment of the rent cannot affect it. I am, therefore, of opinion, that in this case, the pauper, by having applied for relief from the parish in *July* 1823, and having received that relief under an order of magistrates, was then actually chargeable, and, therefore, removable, under the 35 *G.* 3. *c.* 101. And I am also of opinion, that at the time when the order of removal was made, he had not acquired any settlement in the parish of *St. B.*, because he had then neither paid a year's rent, nor done any act which, in point of law, can be considered as equivalent to payment. — HOLROYD J. I also think, that this order of removal is valid. A party, in order to gain a settlement by renting a tenement, is required, by the 59 *G.* 3. *c.* 50., to do certain things which were not requisite before. One of the things required is, that there should be a payment of one year's rent by the tenant to the landlord. Here the year's rent had become due and payable at *Midsummer*, and on the 1st of *August* the landlord gives the pauper a fortnight's time to pay it, and before it is actually paid, and before the pauper had done any act which the law considers equivalent to payment, the order of removal was made. At that time, then, the pauper had not gained any settlement in the parish of *St. B.* It is, therefore, unnecessary to consider, whether the finding of the justices that the annual value of the tenement was less than 10*l.*, is material or not. I am of opinion, that the subsequent payment of rent does not, by retrospective operation, give the party a settlement in the parish of *St. B.*, at the time when the order of removal was made. I fully agree with my Brother *Bayley*, that since the 35 *G.* 3. *c.* 101., it is not necessary to remove paupers actually chargeable, within 40 days after they have come to settle, but that they may be removed at any time after they have become so chargeable. — LITTLEDALE J. It is unnecessary in this case to decide the question, whether, in opposition to the contract of the parties, any other value than the rent actually payable can be set up, because since the statute of the 59 *G.* 3. *c.* 50., no settlement can be gained until a year's rent is actually paid. Now in this case, the order of removal was made on the 5th of *August*, and the year's rent was not paid until the 14th. The subsequent payment of the rent cannot, by retro-

spective operation, give him a settlement at the time when the order of removal was made, and, therefore, the pauper had not gained any settlement at that time, and having then become actually chargeable, he was properly removed. The order of Sessions must, therefore, be confirmed.—Order of Sessions confirmed.

III. *How the Settlements of such Persons shall be inquired into.*

See Stats. 24 *G.* 3. *c.* 6. § 2, 3. 35 *G.* 3. *c.* 124. § 2.

No other attested copy of the examination under the *mutiny act* than that given to the soldier is legal evidence.

705. *Rex* v. *Clayton le Moors* (*a*), *T. T.* 34 *G.* 3. 5 *T. R.* 704. —The counsel for the respondents called a witness, who produced a written paper, whereof the following is a copy: "*Middlesex*, to "wit. The examination of *J. F.*, late of *C.*, but now a soldier in "His Majesty's first regiment of foot guards, touching his settle- "ment, taken upon oath, before us, *W. A.* and *W. K.*, Esquires, "two of His Majesty's justices of the peace in and for the county "of *Middlesex*, this 26th of *April* 1794, who, on his oath, saith, "&c. &c. &c. Signed, the mark of *J. F.* Sworn before us, this "26th of *April* 1794, *W. K.*, *W. A.*" The witness proved that the paper, excepting the name of *W. A.* standing by itself, was *a true copy*, examined by himself, of another paper-writing, which the witness saw in the office in *Bow Street*, that he saw *W. A.* subscribe his name to the paper-writing now produced, and received it from him on the 26th of *April* 1794; but that he did not know the person of the pauper, nor was he present at his original examination.—LORD KENYON C. J. This clause in the mutiny act is of modern introduction; and before that time there is no pretence to say that such an examination as the one in question could be received in evidence. It is admitted that it is contrary to the common rules of evidence. Whether it were or were not wise to introduce such a clause in the mutiny acts, which was not formerly contained in those statutes, it is unnecessary to inquire; but the question here is, Whether this act of parliament, which makes an innovation on the law of evidence, should be carried beyond the express words of it? In my opinion it ought to be construed strictly: for the examination, which is to be made evidence, is an *ex parte* examination, which the parish interested have no opportunity of knowing at the time it is taken; and of course they are deprived of all opportunity of cross-examining the party who makes it. The act of parliament directs that, under certain circumstances, the party shall be examined respecting his settlement before two magistrates, and then it directs the magistrates to give an attested copy of such affidavit so made before them to the person making the same, to be by him delivered to his commanding officer, in order to be produced when required. If the act had stopped here, neither the original examination nor the copy would have been evidence; but the act immediately adds, "which "attested copy shall be at any time admitted in evidence," &c. There seems to be some absurdity in saying that the inferior species of evidence, namely, the copy of that examination, shall be evidence, when the superior evidence, the original examination, is not evidence: it is not necessary, however, to say here whether or

(*a*) See Rex *v.* Warminster, *post*, pl. 708.

not the original is evidence. I also choose to avoid saying any thing respecting the case of *Rex* v. *St. Michael's, Bath.*(a) This is not a question *de bono*, but *de vero*; not what it is convenient that the law should be, but what the law is. And it is sufficient for the determination of this case to say, that the copy of the examination tendered in evidence, at the Sessions, is not the copy which the act of parliament directs to be received in evidence.—ASHHURST J. This act of parliament introduces a new species of evidence, which may affect the interest of third persons, and, therefore, it should be construed strictly. Several objections have been taken to this examination; first, That it does not appear that the person examined was within the jurisdiction of the magistrates who took this examination: the act says that two justices of the town or place, &c., may summon the soldier to appear, &c., and take his examination, &c.: but here it does not appear that the soldier was summoned; he may have appeared voluntarily before the justices. There seems to be another objection in addition to those taken at the bar; the person examined only put his mark to this examination: but there is nothing to identify the person, and to show that the party examined was the person whose settlement came in question. This copy of the examination, then, which was given in evidence, appears to be at the most but an attested copy of an affidavit taken before two magistrates, which, according to the general rules of evidence, is not legal evidence.—GROSE J. This act of parliament certainly has made that evidence which, by the rules of the common law was not so, and which was to be taken in the absence of those who might be interested in the question. And in construing this act I cannot say that that which by the common law is not evidence, and which the legislature have not in this instance directed to be received in evidence, shall be admissible evidence. The act has directed the justices to give an attested copy of the affidavit to the person making the same, to be by him delivered to his commanding officer, in order to be produced when required: that copy, therefore, is the only instrument which is directly made evidence. I do not say indeed that the original affidavit would not be evidence, for the original may be as good evidence as that which purports to be a copy of it. However, I do not at present give any opinion upon that point. But as this was neither the examination itself, nor the copy which the act of parliament says shall be received in evidence, I am of opinion that it ought not to have been admitted as evidence. There seem to be other objections to this copy of the examination, but it is not necessary to enter into a discussion of them, because the first objection alone is decisive.—LAWRENCE J. It is material, in construing this clause, to look to the preamble of the act, which is for regulating the army "within this kingdom." One inconvenience intended to be remedied was that of taking a soldier out of his quarters for the purpose of his being examined respecting his settlement; and in order to guard against this inconvenience the act directs the magistrates who take the soldier's examination, to give him a copy of it, to be by him delivered to his commanding officer; that copy is lodged in the hands of the commanding officer, that it may be afterwards produced when required, to prevent the soldier being taken from his quarters. But if the soldier go abroad, the same inconvenience is

(a) *Ante*, pl. 601.

not likely to happen, and the act of parliament does not apply to such case.

706. *Rex* v. *Warley*, *H. T.* 36 *G.* 3. 6 *T. R.* 534. — On an appeal to the Sessions, the respondents, in order to prove the settlement of *Barrett* to be at *H.* produced in evidence the original examination of *B.* touching his legal settlement, taken before two justices of the peace, &c. pursuant to the statute directing the same. And they also offered evidence to prove that soon after taking the examination an attested copy thereof was delivered by the two justices to *B.*, and which attested copy was by him delivered to his commanding officer, who certified the same at the foot of the original, and that such attested copy was at the head quarters of the regiment in *Ireland*; but the counsel for the appellants contended that though *the attested copy* was made evidence, *the original examination* was not; and the Court being of that opinion rejected it. — LORD KENYON C. J. The question is, Whether or not *the original examination* be evidence? On that question it is impossible to doubt. The proposition now attempted to be supported is, that *the attested copy* is of more weight than *the original examination*; but it is fair to conclude that the legislature, when they made the inferior species of writing evidence, also intended to make the superior species evidence. — GROSE J. It was not necessary to decide this question in the case alluded to of *Rex* v. *Clayton le Moors* (*a*); but, from the manner in which I there spoke of it, it is plainly to be inferred that I thought that the original examination was admissible in evidence.

The original *examination* taken under the mutiny-act is admissible evidence as well as the *attested copy*.

(*a*) *Ante*, pl. 705.

707. *Rex* v. *Bilton*, *M. T.* 41 *G.* 3. 1 *East*, 13. — On an appeal against an order of two justices, removing *G. B.* the wife of *H. B.*, a private soldier in the fifth battalion of royal artillery, together with *A.* and *H.* their children, from *L.* to *B.*, the Sessions confirmed the order, subject, &c. On the hearing of the appeal, ATKINSON, the attorney for the respondents, produced a written paper, of which the following is a copy: "*Durham*, to "wit: The examination of *H. B.*, a private soldier in the fifth "battalion of royal artillery, taken and made before us, two of "his Majesty's justices of the peace for the said county, the 5th "of *March* 1800; who on his oath saith, that some time in the "beginning of the year 1777, he bound himself by indenture to *S.* "in the township of *H. H.*, in the parish of *K.*, in the county of "*Y.*, to serve him as a shoemaker for the term of seven years. "That he served the whole of such term, and slept all the time in "his master's house in the township of *H. H.* And saith that he "hath never since gained any other settlement. Signed, the mark "of *H. B.* Taken and sworn the day and year before us, *R. W.*, "*R. G.*" Which paper writing so produced by the said *J. A.* he said that he had received from *M.* the overseer of the poor of *L.*; but the said *M.* was not produced as a witness, nor was any evidence whatsoever offered either to prove that the said *R. W.* and *R. G.* were magistrates for the said county of *D.*; or that the signatures subscribed to the said paper-writing were the signatures of the said magistrates, other than what appears upon the said paper. The counsel for the appellants objected to the Court receiving this evidence, which objection was over-ruled, subject to the opinion of this Court. — WOOD and HAYWOOD, in support of the order of Sessions, contended that the written examination

The examination of a soldier touching his settlement, which is made evidence by the mutiny-act, must be authenticated before it can be received in evidence, and does not prove itself, *primâ facie*, though the paper appear to be in the form prescribed by the statute.

produced was *primâ facie* evidence of the settlement under the provisions of the Mutiny Act (*a*); for it was decided in *Rex* v. *Warley* (*b*) that the original examination of a soldier touching his settlement, as well as the attested copy of it, was admissible evidence of the settlement under that act. — LORD KENYON C. J. interfering, said that the case was too plain for argument. That the paper in question might possibly have been good evidence if properly authenticated: but the objection here was that the possession of it was not accounted for, or any other circumstance proved to authenticate it. (*c*) The mere production of it in Court proved nothing. The respondent's counsel then prayed the Court to send the case down again to the Sessions to be heard upon the merits. But LORD KENYON C. J. said, that it was their own fault in not being prepared with sufficient legal proof upon the trial of the appeal: and it would be of mischievous consequences to permit parties to go to another trial because their evidence was defective in the first instance. That the Court were bound to quash the order of Sessions, which appeared to have no foundation for its support; and the consequence followed of course. — PER CURIAM: — Both orders quashed.

The examination of a soldier, taken under the mutiny act, is to be received as evidence as to his settlement, even though he be dead, or absent from the kingdom, at the time when the appeal is tried.

708. *Rex* v. *Warminster*, *M. T.* 60 *G.* 3. 3 *B.* & *A.* 121.—Removal from *W.* to *T.* — Order quashed, subject, &c. — The pauper was married to *R. M.*, *January* 30, 1782, who was then a soldier quartered at *W.* In *February*, in the same year (whilst he still continued a soldier) he was taken before the magistrates to be examined according to the clause in the mutiny act with regard to his settlement. The respondents offered in evidence the examination of the pauper's husband under the mutiny act, which the Court rejected, upon the ground that he was dead at the time of the appeal being tried, and that the act of parliament did not apply to such a case. In support of the order of Sessions, the opinion of *Lawrence* J. in *Rex* v. *Clayton le Moors* (*d*), was cited. — ABBOTT C. J. No man entertains a higher opinion of any thing which fell from Mr. J. *Lawrence*, either judicially or extra-judicially, than I do. The point, however, upon which he is supposed to have given an opinion, was not the point which was argued before him, or upon which the Court pronounced judgment. His

(*d*) *Ante*, pl. 705.

(*a*) S. 33. enables two or more justices of the peace for the county, &c. where any non-commissioned officer or soldier shall be quartered, in case such officer or soldier has either wife or child or children, to cause such officer or soldier to be summoned before them, in the place where they are quartered, in order to make oath of the place of their last legal settlement; and such persons are directed to obey such summons, and to make oath accordingly. And such justices are thereby required to give an attested copy of such affidavit to the person making the same, to be by him delivered to his commanding officer, in order to be produced when required, which attested copy shall be at any time admitted in evidence as to such last legal settlement before any of His Majesty's justices of the peace, or at any general or quarter session of the peace. Provided always, that in case any such officer or soldier shall be again summoned to make oath as aforesaid, then on such attested copy of the oath by him formerly taken being produced by him or by any other person on his behalf, such officer or soldier shall not be obliged to take any other or further oath with regard to his legal settlement, but shall leave a copy of such attested copy of examination if required.

(*b*) *Ante*, pl. 706.

(*c*) The want of proof of the handwriting of the magistrates had been before suggested at the bar as the principal objection to the admission of the evidence.

attention does not appear to have been directed to the words used by the legislature, "that the attested copy shall, *at any time*, be "admitted in evidence." It has been contended that the words, "at any time," do not mean at a time when the pauper was either absent from his country, or when he was dead. I cannot, however, find any thing in the act of parliament from which I can infer that it was the intention of the legislature to restrain those words to the life of the pauper, or during his residence in this country. On the contrary, it seems to me, that it may have been the intention of the legislature to preserve the memorial of the evidence of the settlement of a person whose life is exposed to more than ordinary risk. I think, therefore, that we are bound to give full effect to the words of the act of parliament, and, consequently, that the examination of the pauper's husband ought to have been admitted in evidence, and that the order of Sessions ought, therefore, to be quashed. — Order of Sessions quashed.

CHAPTER X.

OF CERTIFICATES.

I. *The Statutes.*
II. *The Form and Manner of granting Certificates.*
III. *Of the Effect and Extent of Certificates.*
IV. *Continuance and Determination of Certificates.*
V. *Of Evidence.*

I. *The Statutes.*

13 & 14 *Car.* 2. *c.* 12. § 1. 3. 8 & 9 *W.* 3. *c.* 30. 9 & 10 *W.* 3. *c.* 11. 12 *Ann. c.* 18. § 2. 3 *G.* 2. *c.* 29. 54 *G.* 3. *c.* 107. 1 & 2 *G.* 4. *c.* 32.

II. *The Form and Manner of granting Certificates.*

The justices may *attest* as witnesses, and *allow* a certificate at the same time.
S. C. Fort. 301. Str. 983.

709. REX v. *Boston, E. T.* 4 *G.* 3. 1 *Str.* 94. — *A.* being legally settled in *B.*, came into *H.* as a certificate-man; and the justices, thinking the certificate not sufficient, made an order to remove him back to *B.* And now, upon motion to quash the order, it appeared that the certificate was signed by the church-wardens or overseers, as 8 & 9 *W.* 3. *c.* 30. directs; and that it was attested by two as witnesses, who were justices of the peace. The statute requires it to be attested by two witnesses, and allowed by two justices of the peace. — And CHESHYRE insisted, that this was a better certificate than such a one as is mentioned in the statute; for the attestation of the signing is only to satisfy the justices that it is the hand of the parish-officers, and nothing can be so satisfactory to them as what they see. And it is not requisite that there be four distinct persons, two to attest and two to allow, but the justices that allow the certificate may act in both capacities: — to which THE COURT agreed, when it appeared they took upon them to act both as witnesses and justices; but here it only appeared they subscribed as witnesses, for there are no words of allowance. If this should be held good, the justices may be drawn in to sign as witnesses, when perhaps they do not so much as know what the instrument is, and never imagined what they did would pass for an allowance. — The certificate was held void, and the order confirmed.

A certificate which appears to have been *legally allowed* shall be presumed to have been attested.

710. *Barleycroft* v. *Coleoverton, M. T.* 7 *G.* 1. *Str.* 402. — This was an order of removal from *B.* to *C.*, reciting that the pauper had 15 years since come with a certificate *allowed* according to the act of parliament from *C.* to *B.* AN EXCEPTION was taken, that it is not said the certificate was *attested*, but only that it was *allowed*. — SED PER CURIAM: the *attestation* is by the statute made previous to the *allowance*; and, therefore, when they say that it was *allowed* according to the act of parliament, we

must intend it was *attested*, for otherwise it could not be so *allowed*. — The order was confirmed.

711. *Rex* v. *St. Ives*, *H. T.* 3 *G.* 2. *Sess. Cases*, 153. — This was a motion for a *mandamus* to be directed to the churchwardens and overseers of the parish of *St. I.*, commanding them to sign a certificate acknowledging a poor person to be settled in their parish. The application was founded on an affidavit, stating that the pauper had served an apprenticeship in *St. Ives*, and that he was capable of getting a good livelihood elsewhere. — BUT THE COURT rejected the motion as a very strange attempt.

The parish-officers cannot be compelled to grant a certificate.

712. *Rex* v. *St. Nicholas, in Harwich*, *H. T.* 15 *G.* 2. *Burr. S. C.* 171. — *T. P.*, obtained a certificate, directed, "To the "churchwardens and overseers of the poor of the parish of *H.*, "near *D. C.*, in the county of *E.*, or to any or either of them," &c., with which he went into the parish of *St. N.*, in *H.*, and delivered the same to *G. D.*, an inhabitant of the parish; but whether he was a churchwarden or overseer of the parish did not appear. — THE SESSIONS found that the proper name of the parish was "*St. N.*, in *H.*," and that there was no such parish as "*H.*, "near *D. C.*" The questions were, FIRST, Whether this certificate was *misdirected*? and, SECONDLY, Whether it was well *delivered*? — CHAPPLE J. I do not think any direction at all to be necessary, and a misdirection is as a void direction. Besides, if a direction were necessary, I should doubt whether this mistake of the name would make it bad. I remember a case of a carrier in Lord *Raymond*'s time, where the plaintiff recovered, though there was no such parish as *W.*, the true name being *C. W.* However, I do not think any direction to be necessary. Then as to the delivery of the certificate, it was delivered to an inhabitant, though it does not appear that he was a parish-officer. If it had been a removal to *H.*, then, indeed, a delivery to the officer had been necessary; but the acts do not make it a condition that he shall deliver his certificate to the parish-officers. — WRIGHT J. concurred. It is admitted on all hands that the act of 8 & 9 *W.* 3. *c.* 30. does not require any direction of a certificate, and that if there had been none it had nevertheless been good. The reason of it is, because the parish of *W.* has, by their certificate, acknowledged him to be "an inhabitant legally settled in their "parish;" and they are thereby bound against all the world. As to the delivery of the certificate, the parish to whom a certificate is delivered cannot remove the certificated person, indeed, till he becomes chargeable; but if no certificate is delivered to them, *non constat* that there is any, and they may, in that case, remove him on complaint of his being likely to become chargeable. But yet this does not make the certificate ineffectual; the parish who gave the certificate is, in all events, bound by the certificate; therefore, the certificate is good as to the parish of *W.* (*a*)

A certificate is good, although it be *misdirected*. S. C. Str. 1168. R. v. Lillington, *post*, pl. 724.

713. *Rex* v. *Wooton St. Lawrence*, *H. T.* 8 *G.* 3. *Burr. S. C.* 581. — *Thomas P.* applied to the parish-officers of *W.*, who gave him a common printed form of a certificate, acknowledging "that

Two justices may exercise their discretion in allowing

(*a*) But see Rex *v.* Bishopside, *post*, pl. 736. and the statute of 8 & 9 Will. 3. c. 30. § 1., which expressly requires the pauper to bring and deliver the certificate to the churchwardens or overseers of the parish where such pauper shall come to inhabit. And in the case of Rex *v.* Wensley, *post*, pl. 722., it is determined, that a certificate not *delivered* to the parish-officers is of no effect.

or refusing a certificate; but an allowance is not valid unless they sign it.

"the said *Thomas*, his wife and children, were settled in the said "parish of *W.*;" it was under the hands and seals of the majority of the parish-officers of the parish of *W.*, and attested by two witnesses; but the blanks for the allowance of justices were not filled up, and no name of any justice was signed thereto. — LORD MANSFIELD C. J. A certificate cannot conclude the parish, unless properly signed. The certificate act specifies certain checks and guards upon certificates. The justices are not obliged ministerially to allow and sign a certificate: they are not bound, at all events, to allow and sign it. They have a discretion to allow it, or not to allow it, if it be liable to objection. The act requires a conclusive certificate to be under the checks and guards therein particularized. This certificate wants them. Therefore, it is no certificate within this act. And, if it is not a certificate within the act, it cannot conclude the parish. It is no consequence, that because the parish-officers may bind their parish in some things, therefore they may in all. If certificates, not within the act of parliament, were to be allowed as evidence and presumption, it would open a door for great litigation before the justices, concerning the degree of such evidence and presumption, which would be infinitely inconvenient; for it would greatly heighten the expence of parishes in carrying on these disputes about the settlement of the poor, with the money which ought to support them. — YATES and ASTON J. agreed it to be a very plain case. It must be a certificate pursuant to the certificate act; or else it cannot conclude the parish that gives it.

If one of the two persons attesting a certificate make *his mark*, the fact of his having signed is sufficiently attested by the justices certifying that the other witness swore that he was present and saw it signed, &c.

714. *Rex* v. *Ashton Keynes*, *H. T.* 13 *G.* 3. *Burr. S. C.* 725. — The pauper went from *S. C.* to *A. K.*, under a certificate signed by the churchwardens and overseers of *A. K.*, and attested by *the mark of A. B.*, and *the name* of *P. J.*; and two justices certified that "he, the said *P. J.*, came before us this day, and made "oath that he was present with the other witness above-mentioned, "and did see the said churchwardens and overseers severally "sign and seal the said certificate; and that his name is of his "own proper hand-writing." — THE WHOLE COURT were extremely clear, that there was sufficient proof of *A. B.*'s attestation. *J.* swears, "that he was present with *B.*, and did see the church-"wardens and overseers severally sign and seal the said certificate." And this is above 30 years ago. It would be very unreasonable, that the parish who gave this certificate so long ago should quibble it off, in this manner, now.

A certificate is not binding unless signed by the majority of parish-officers and justices.

715. *Rex* v. *Tamworth*, *E. T.* 14 *G.* 3. *Burr. S. C.* 770. — *S. W.* went from *St. M.* to reside in *T.*, and brought with him a paper writing, purporting to be a certificate under the hands and seals of *T. D.* and *J. H.*, churchwardens, and *D. G.* and *S. E.*, overseers of the poor of the said parish of *St. M.*, and allowed by *A. O.* and *H. C.*, two justices of the peace for the city and county of the city of *C.* It appeared that there had always been *six churchwardens* and *four overseers* for the parish of *St. M.*; and the Sessions were of opinion, that as the certificate was executed by *four* only of the parish-officers, it was not a valid certificate. — THE COURT thought it a hard case upon *T.*; but they held themselves to be bound down by positive law. The statute is express and positive, that the certificate must be under the hands and seals of the churchwardens and overseers, or the major part

of them. — ASTON J. mentioned the case of *Wooton St. Lawrence* (*a*), where the Court agreed, that a certificate cannot conclude the parish that gives it, unless it be pursuant to the act of parliament.

(*a*) *Ante*, pl. 713

716. *Rex* v. *Buckingham*, *M. T.* 20 *G.* 3. *Cald.* 64. — *M. S.* was removed from *F.* to *B.* *F.* granted a certificate to the pauper, which she kept in her possession, and did not deliver it to the parish of *B.* till after the removal. Upon the hearing of this appeal, this certificate was offered as conclusive evidence against *F.*, so as to prevent their setting up any settlement obtained in the parish of *B.*, previous to such certificate granted; but the Sessions were of opinion that the certificate, under these circumstances, was not a good certificate, or such an one as they could receive as conclusive evidence; and confirmed the said order of removal. — But, PER CURIAM, both orders quashed.

Certificate of a prior date, though not delivered till after the removal of the pauper, is conclusive upon the removal by the parish granting it.

717. *Rex* v. *Hayder*, *E. T.* 27 *G.* 3. EDITOR's *MSS.* — Two justices removed the pauper from *K. to H.*, and the Sessions confirmed the order. The order stated, That the pauper resided at *K.* under a certificate, which there was reason to believe had been casually destroyed by fire; and as *H.*, the certificating parish, refused to grant another certificate, and the pauper was likely to become chargeable, therefore they removed him. — GALLEY moved to quash these orders, on the ground that it appeared on the face of the original order that the pauper resided under a certificate, and therefore was not removable till actually chargeable. The refusal of the parish to grant a new certificate made no difference; for they were not bound to do it: and the other parish were not prejudiced by the refusal, as the evidence, which was all on the pauper's oath, was sufficient to establish the certificate. — The other side having taken an opinion, and being satisfied that the orders could not be supported, showed no causes, and the orders were quashed.

The loss of a certificate, and refusal to grant another, are not grounds to justify the removal of a certificate-man who is not *actually* chargeable.

718. *Rex* v. *Margam*, *E. T.* 27 *G.* 3. 1 *T. R.* 775. — *J. T.* and *B.* his wife were settled in *M.* by virtue of a certificate under the hands and seals of *R.* churchwarden, and *H. T.* overseer of *M.*, and *P.* and *W.* justices of the peace, and attested by two witnesses. It appeared upon an examination at the Sessions, that at the time of giving the certificate, that there were *two* overseers, and *four* churchwardens in *M.* — THE COURT were clearly of opinion on this point of the case, that as the certificate was signed by only one churchwarden and one overseer, when at the time of granting it there were four churchwardens and two overseers in *M.*, it was undoubtedly bad.

A certificate not signed by a majority of the churchwardens and overseers, is void.

719. *Rex* v. *Farringdon*, *E. T.* 28 *G.* 3. 2 *T. R.* 466. — *C.* came to *F.* under a certificate from *T.*; in the margin of which was written as follows: "*April* 17th 1736. Allowed by us, being "first proved to be duly executed, as the statute in that case "directs and appoints. *A. Heiplurge. S. Fletwood.*" And attested thus: "Attested by us, the mark ⋈ of *J. Johnson*. *W. Webb.*" And then at *the end of the certificate* two justices certify, "that *J. Johnson*, one of the witnesses who attested "the execution of the said certificate, hath made oath before "us, that he did see the churchwardens and overseers, whose "names and seals are to the said certificate subscribed and set, "severally sign and seal the said certificate, and that the mark "of the said *J. J.*, and the name of *W.*; whose names are sub-

An allowance of a certificate written in the margin thereof, and signed by two justices, is sufficient where a certificate is above 30 years old, notwithstanding it does not certify the affidavit of one of the witnesses pursuant to 3 G. 2. c. 29.

"scribed as witnesses to the execution of the said certificate, "are of their own proper hand-writing." The question was, Whether the signatures by the justices in *the margin* of the original certificate, could be applied to the certificate of the attestation of the due execution on the other, so as to make it a sufficient certificate within 3 *G.* 2. *c.* 29. and 8 & 9 *W.* 3. *c.* 30?—ASHHURST J. I am of opinion that the certificate must be allowed. If this question had arisen soon after the certificate was granted, and the parties had relied on the sufficiency of this allowance under the statute 3 *G.* 2. *c.* 29., I should have doubted whether the requisites of the act had been complied with. But this act was only passed for the purpose of facilitating the mode of proving certificates, and was not intended to take away any mode of proof which existed before the statute. Now this certificate having been granted above 30 years, it is not necessary to substantiate it by the mode of proof prescribed by this act; for it having been recognized and acted under for so long a period, it was not necessary to have recourse to this act at all. Therefore, on the ground of the length of time which has elapsed since the certificate was granted, I think it is binding, and, consequently, that the rule must be made absolute.— BULLER J. If this certificate be good within the meaning of either of these acts of parliament, the rule for quashing the order of Sessions must be made absolute. Now I am of opinion, that it is good under both of those statutes. There is no doubt but that this certificate is good under 8 & 9 *W.* 3. if it be proved; and that act certainly is not repealed by the 3 *G.* 2. *c.* 29. Now it is an established rule, which holds in the case of all deeds, that if it be above 30 years' standing it proves itself, and here it is stated that this certificate has been granted 50 years. And I also think that it is good within the latter act. The objection, if any, is, that the justices have taken upon themselves to say generally that the certificate was executed according to the requisites of the act, without stating *how*; but there is no particular form of allowance prescribed by the act. And if the nature of this instrument be considered, there can be no doubt in this question: if this be compared to a conviction, where the utmost strictness and certainty are required, I agree that it would be bad; but if it be compared to an order of justices, which it resembles more, then it must be held sufficient, because every thing is to be intended in support of it. Here the legislature has reposed a trust in the justices of the peace; the act requires certain forms to be pursued, the compliance with which they are to certify. In this case they have allowed the certificate, saying, "being first proved to be duly executed, as the statute in that case directs and appoints." Now if the formalities required by the act were not complied with, the certificate must be false; for it could not be proved to have been duly executed but by following the directions of the statute. But we cannot deny credit to the magistrates in the execution of that trust which the legislature has reposed in them. Therefore, on both grounds, I am of opinion that the certificate is good.— GROSE J. If this certificate be good within the statute of 8 & 9 *W.* 3., it is good notwithstanding the requisites of the 3 *G.* 2. *c.* 29. were not complied with. Now I think it is sufficiently proved under the statute of *W.* 3., because it is above 30 years standing; and such an

instrument proves itself after that length of time. Then it is not necessary to consider whether it be good or not within the act 3 *G.* 2. *c.* 29. The leaning of my mind at present is, that it was not sufficiently proved under that statute, because all the requisites of that act have not been complied with. If those formalities have in general been adopted, I should be loth to say that they may be dispensed with. But at present it is not necessary to decide that question, because I am of opinion that it is good under the former statute.

A certificate promising to receive the pauper *when requested*, means only when *legally requested*, viz. by two justices when they become chargeable.

720. *Rex* v. *St. Mary Westport*, *H. T.* 29 *G.* 3. 3 *T. R.* 44. — *P.* went to reside in *B.*, under a certificate from *W.*, acknowledging them to be legal inhabitants of *W.*, and *promising*, for themselves and their successors, the churchwardens and overseers of the poor for the time being, "*that they would receive the said* P. *when* "*they should be thereto requested*, unless they or either of them "should obtain a legal settlement elsewhere." The pauper resided in *B.* under the certificate till removed by the present order. It was contended, that the parish of *W.* were estopped by their own act to say they would not receive the pauper when *required*, according to the terms of their own contract. — LORD KENYON C. J. Although this certificate is not in the usual form, yet, as far as it relates to the question now before us, it must be considered as a common certificate. And the single question is, Whether the person who has been removed can, in the fair sense of the words, be said to have been actually chargeable to the parish of *B.*? — ASHHURST J. No doubt arises from the particularity of this certificate; for the promise by the certifying parish to receive the pauper when they shall be thereto requested, can only be taken to mean when they should be *legally* requested. Now the person mentioned in the certificate had a right to reside in *B.* under it till he became chargeable, when only the certifying parish could legally be requested to receive him. — GROSE J. The first question arises on the effect of the certificate. Although that is different from the common form, yet I have no doubt in saying, that it can have no other operation than what it derives from the 8 & 9 *W.* 3. *c.* 30.: if it had, it would go a great way to defeat that statute: for that act directs, that a certificate given in the terms therein prescribed, shall oblige the parish granting it to receive the persons therein mentioned when they shall become chargeable, and that then they shall be removed. But this is an undertaking to receive the person mentioned in it *when he should be thereto requested*; which is directly contrary to the statute. Therefore I think this is void, unless it be considered as a certificate within the act.

A certificate granted by some of the parish-officers of a parish consisting of several hamlets, and having separate overseers, although they therein describe themselves as officers of the parish at

721. *Rex* v. *Samborn*, *E. T.* 30 *G.* 3. 3 *T. R.* 609. — In 1706 a certificate was given by the parish of *Tamworth* to the hamlet of *S.*, acknowledging *H. W.*, the grandfather of the pauper, to be an inhabitant legally settled in their parish. *T. W.*, the father of the pauper, was born at *S.*, under this certificate from *Tamworth*. *W. W.*, the present pauper, never gained any settlement for himself, but his settlement depends on the settlement of his father, *T. W.* In 1736, a certificate of the pauper's father, *T. W.*, was given to the parish of *Tardebigge*, in which *T. A.* and *R. B.*, of *S.*, *churchwarden and overseer of the poor of the parish of* C., acknowledged *T. W.* and *E.*, his wife, to be *inhabitants legally settled at* S., *in their*

large, may be explained by evidence, that they were only the officers of the hamlet in which the pauper was settled.

said parish of C., and promised to receive them *into the said parish* whenever they should become chargeable, and to provide for them as their inhabitants legally *settled within the parish of* C. This certificate was properly attested and allowed by two justices of *Warwickshire*. The hamlet of *S.* does now, and did, at the time of the date of the certificate of 1736, maintain its own poor separately from the parish of *C.*, and has, and at that time had, a churchwarden and an overseer of their own, separate from the parish of *C.* *T. A.* and *R. B.*, who signed the certificate of 1736, were churhwardens and overseers of the poor of the *hamlet* of *S.* at the time of granting the certificate. It was contended, first, That the certificate of 1736, which purported, on the face of it, to be granted by *the parish-officers of the parish of* C., could not bind *the hamlet* of *S.*, which was a separate and independent district. As *S.* maintained its own poor, it was competent to them, under the 8 & 9 *W.* 3. *c.* 30., to give a certificate to *Tardebigge*; and as that statute requires the certificate to be signed by the officers of the *parish*, *township*, or *place*, the certificate in question is not binding, because the requisites of the act were not complied with. It cannot be presumed that the officers of the hamlet, which was totally independent of the parish at large, as far as respected the maintenance of the poor, could know what the officers of the parish at large had done; the hamlet, therefore, ought not to be bound by an act like the present. And, secondly, No evidence ought to have been admitted at the Sessions to contradict this certificate, and to show that the persons, who described themselves in the certificate to be officers of the *parish* of *C.*, were the churchwarden and overseer of the *hamlet* of *S.* If a magistrate, who happens to act in the commission of the peace for two counties, do an act in one county, describing himself as a magistrate for the other, no evidence can be given to show that he acted for the former county. All officers, whether judicial or ministerial, must describe themselves properly in their own acts. It is not sufficient that the justices, removing a pauper, be so styled on an appeal; they must be so described in the order. (*a*) The Sessions cannot make such an addition, because that would be amending matters of substance: whereas by the statute 5 *G.* 2. *c.* 19., they can only amend matters of form.—LORD KENYON C. J. I cannot form any doubt in my own mind in this case. The certificate-act requires that the certificate shall be signed by the churchwardens and overseers of the parish, township, or place, granting the certificate; and it is expressly stated, in the concluding part of this case, that the certificate in question was so signed.—BULLER J. The evidence does not *contradict*, but it *explains*, the certificate.

Rex *v.* Wooton St. Lawrence, *ante*, pl. 713.

(*a*) See the case of Walton *v.* Chesterfield, *post*, pl. 775.

A certificate not *delivered* to the parish-officers, pursuant to the stat. 8 & 9 W. 3. c. 30. is of no effect. But see Rex *v.* Buckingham, *ante*, pl. 716.

722. *Rex* v. *Wensley*, *H. T.* 33 *G.* 3. 5 *T. R.* 154.—*H.* being told by the overseers of *C.* that he must procure a certificate, or they would remove him, procured a legal certificate from the parish of *D.*, directed to the township of *C.*, acknowledging him to be their parishioner; but nothing further passed between *H.* and the overseers of *C.*, respecting the certificate, after their first requisition to him to procure one; he, therefore, not being again called upon, did not deliver the certificate to the overseers of *C.*, and it remained in his hands without mention or further notice during the whole time that the pauper served him as his apprentice at *C.*; but some time after the pauper left *H.*, the certificate

was delivered by *H.* to the overseers of *C.*—LORD KENYON C. J. We cannot depart from the express and positive words of the act of parliament, which are decisive of this question. In the construction of some statutes the Courts have thought, from considering the context and the words of it, that some particular words are merely directory: but there is nothing in this statute to show that the words commented upon should be construed to be directory only. The statute says expressly that "if any person, who shall "come into any parish, &c., shall *at the same time procure, bring,* "*and deliver*, to the churchwardens, &c., of the parish where such "a person shall come to inhabit, a certificate," &c.; the act, therefore, requires a delivery at the time when the pauper goes into the certificated parish; and it is essential to the interest of that parish that it should be delivered, as the withholding it from them for a time may be the means of introducing frauds. The case cited only decided that a certificate, though not delivered, was an acknowledgment, by the parish granting it, that the pauper was settled with them when it was given, but did not determine that it prevented the pauper gaining a settlement in the certificated parish after it was granted.

A parish certificate must be signed by a majority of the parish-officers, *de facto*, and must be directed to one parish in particular.

723. *Rex* v. *Wymondham*, *H. T.* 36 *G.* 3. 6 *T. R.* 552.—On the 10th of *December* 1795, a certificate, signed by two churchwardens and four overseers, describing themselves as the churchwardens and overseers of the parish of *W.*, was sent to the parish of *St. S.*, in the city of *N.*, acknowledging *D.*, his wife, and three children, of whom the pauper was one, to be inhabitants legally settled in *W.*, and undertaking to receive them whenever they should become chargeable to *St. S.*'s, or to any other parish in *N.* *D.*, the pauper, hired himself to *J. M.*, of *L.*, from *Lady-day* 1798, for a year, at the wages of 50*s.*, and served him during that and the two following years. The parish of *L.* is one of the parishes within the liberties of the city of *N.* (*a*) Prior to the year 1776, the year in which the parish of *W.* was incorporated with other parishes in the hundred of *F.*, in the county of *Norfolk*, for the maintenance of the poor by act of parliament (*b*), it had been usual in the parish of *W.* to appoint four churchwardens and eight overseers of the poor every year. The parish of *W.* consists of several divisions. One general rate is made for the whole parish, which is collected separately in each division, and the money so collected has been paid into the hands of a treasurer, who acts for the parish at large. The poor persons of each division are relieved out of this general fund; and no order of removal has ever been made from one division of the parish of *W.* to another division of the same parish.—LORD KENYON C. J. A certificate is not binding on the parish granting it, unless it be signed by a majority of the parish-officers. Here the first question is, Whether this certificate was signed by a majority of the parish-officers *de facto* as contradistinguished from such officers *de jure*? for if it were, it was valid. The counsel in support of the order of Sessions has attempted to make a distinction between the four first overseers and the rest: but if the legality of their appointment were under consideration, it would be impossible to distinguish the first from the last, and to

(*a*) By stat. 10 Ann. c. 6. the parishes in *Norwich* are incorporated for the purpose of erecting a workhouse and maintaining the poor out of one joint fund.

(*b*) Stat. 16 G. 3. c. 9.

say that the four first only were legally appointed. Here, indeed, it is not stated as a fact that there were 12 parish-officers at the time when this certificate was granted: but the justices have stated evidence sufficient to have enabled them to draw the conclusion that the fact was so; for they have stated that it was *usual* to have that number in the parish. But it would be nugatory to send the case back on that ground, because if the certificate were valid at the time when it was granted, I think it was discharged by the pauper's subsequent hiring and service in the parish of *L.*, which, to this purpose, is a separate and distinct (*a*) parish from that of *St. S.* And a certificate is not a transferrable instrument from one parish to another: it must be directed to one parish in particular; if it were to extend farther it would operate as a licence for vagrants.

(*a*) *Vide* Rex *v.* St. Michael's, 6 T. R. 536.

A certificate directed to the parish of A, or any other in C, will operate upon delivery to the parish of B, which is also in C. By the stat. 8 & 9 W. 3. c. 30. such certificate need not be directed to any particular parish.

724. *Rex* v. *Lillington*, *E. T.* 41 *G.* 3. 1 *East*, 438. — The pauper was born in the parish of *L.*, where his parents were legally settled. In 1751, when the pauper was very young, his father obtained a certificate from the parish-officers of *L.*, whereby they acknowledged the pauper's father and mother, and the pauper to be their inhabitants legally settled in the said parish; and the said certificate was directed as follows, (*viz.*) "To the churchwardens and "overseers of the poor of the parish of *H. T.*, or any other parish, in "the city and county of *C.*" The pauper's father and mother brought the pauper with them and the certificate to *C.*, and delivered the certificate to the parish-officers of *St. J.*, in the said city. When the pauper was about eight years of age, he was bound an apprentice to *J. S.*, of *St. J.*, for the term of eight years, and served his master accordingly in the said parish, and hath done no other act to gain a settlement. The counsel for *L.* objected to the validity of the certificate, insisting that the same was not valid by reason of the uncertainty of the direction. But the Court of Quarter Sessions were of opinion the same was a valid certificate. — GIBBS, in support of the order of Sessions, after stating the question to be, Whether it were necessary to the validity of a certificate that it should be directed to that parish to which it was delivered, and under which the paupers were received and permitted to dwell there? was stopped by LORD KENYON C. J., who observed, that it was a settled point that a certificate need not be *directed* to the particular parish to which it was delivered. That the only dictum to the contrary was a loose expression of his own in the case of *Rex* v. *Wymondham* (*b*), which the principal question in the case did not call for. So far what was said was right, that a certificate was not a transferrable instrument from one parish to another; for then it would operate as a licence for vagrancy; that is, after it has performed its office in one parish, it cannot be taken to another for the same purpose; and so from parish to parish as often as the certificated person shall choose to remove himself. — THE ATTORNEY-GENERAL for the appellants contended, that the opinion alluded to, though contrary to the case of *Rex* v. *St. Nicholas, Harwich* (*c*), was founded in reason and convenience; and the reason given by *Wright* J. for the decision in that case, *viz.* that it is an acknowledgment by the certifying parish that the

(*b*) 6 T. R. 552. His Lordship most frankly and obligingly took the inaccuracy of expression upon himself, in exoneration of the reporters, who might probably, from inadvertence, have used a word which carries his opinion further than he intended.

(*c*) *Ante*, pl. 712.

party named in the certificate is their parishioner, which is conclusive against them as to all the world, was certainly ill-founded, and had been since over-ruled. (*a*) That the certificate in question must be taken either to have been directed to the parish of the *H. T.*, or not directed at all; and in either case it would operate as a licence for vagrancy, if, by a delivery to a parish not named, it could have any effect; for the party to whom it is given need not produce it to the officers of the parish into which he went till he was about to be removed; and then he might carry it into whatever other parish he pleased. It would also open a door to collusion between parishes; for, after the death of a pauper, who alone could, in most cases, prove the delivery, it might be handed over from one parish to another as the occasion required, and nothing would appear upon the face of it to show that it was not granted to the particular parish by whom it was produced, who might prove it by a witness who had taken it out of the parish chest, ignorant of the circumstances under which it had been placed there. — GROSE J. The act of the 8 & 9 *W.* 3. *c.* 30., upon which alone the question turns, does not require that the certificate should be *directed* to any particular parish. And in the case alluded to, of *St. Nicholas, Harwich*, it was expressly determined, not only that no such direction was necessary, but that even a misdirection would not avoid the certificate. — LE BLANC J. The case of *St. Nicholas, Harwich*, has settled the point. And the expression made use of by Lord *Kenyon* in *Rex* v. *Wymondham* must be taken with reference to the particular point then in judgment, beyond which it cannot be supported. — PER CURIAM: Both orders confirmed. (*b*)

725. *Rex* v. *Clifton* (*c*), *H. T.* 42 *G.* 3. 2 *East*, 168. — *R. H.*, the father of the pauper, *J. H.*, in the year 1780, went with his family to reside at *Y.*, under a certificate dated the 18th *November* 1780, under the hand and seal of *W.*, only overseer of the poor of the township of *S.*, in the parish of *A.*, in the said county, and duly allowed by two justices, acknowledging the said *R. H.*, *Hannah*, his wife, and *Joseph*, their child (the pauper), to be inhabitants legally settled in *S.* The said *R. H.*, with his family, resided at *Y.* under the said certificate about a year, when he returned to *S.* with his family, except the pauper, *Joseph*, who was then only two years old, who was left with his grandfather in *Y.*, with whom he resided till he was 16 years old, when he was hired and served a year in *Y.* The parish of *A.* consists of five townships, viz. *Y.*, *S.*, *C.*, *O.*, and *A.* The townships severally maintain their own poor, and have separate and distinct overseers. The parish of *A.* has two churchwardens, who are appointed for the parish at large. At the time of granting the above certificate *W.* was the only overseer appointed for the township of *S.* during that year. There has been generally only one overseer appointed for the township of *S.*; though, in some few instances, there have been two. There has always been a sufficient number of inhabitants to have appointed two overseers. — GROSE J. The question is,

An appointment of one overseer alone for a township is bad in law; the stat. 13 & 14 Car. 2. c. 12., requiring at least two: and a certificate granted by such overseer is void, and gives no security of the certificated parish against the gaining of a settlement there by the party named therein: such certificate not being made pursuant to the stat. 8 & 9 W. 3. c. 30., which requires it to

(*a*) *Vide* Rex *v.* Bishopside, *post*, pl. 736. Burr. S. C. 381. Rex *v.* Lubbenham, *post*, pl. 741. 4 T. R. 251.

(*b*) The delivery of the certificate gives it operation. Rex *v.* Wensley, *ante*, pl. 722.

(*c*) See Rex *v.* St. Margaret, Leicester, *post*, pl. 726.

be made "by the churchwardens and overseers, or the major part, or by the *overseers*, where there are no churchwardens."

Whether the certificate granted by one overseer can be good? First, considering it as a certificate given by an overseer appointed under the statute 43 *Elizabeth*, it cannot avail; because the statute of king *William*, to which it must conform, directs that it shall be made by the churchwardens and overseers, or the major part of them; or where there are no churchwardens, by the overseers; and by the statute of *Elizabeth*, the churchwardens, and not less than two substantial householders are required to be nominated overseers. Now this certificate was not granted by either one or the other of those descriptions of persons. Then see if it can be supported as a certificate given by a township under an appointment by virtue of the stat. 13 and 14 *Car.* 2.; for it is of great importance to take care that a certificate which is to be binding on the inhabitants of the township is properly given in the manner prescribed by law. That statute expressly requires, that in every township of any parish which cannot reap the benefit of the stat. 43 *Eliz.* "there shall yearly be appointed *two* or *more* overseers," &c. Then, if the township claim the benefit of the act to appoint its own overseers, it must adhere to the direction of the act, and appoint not less than two overseers. And there is a good reason for requiring the concurrence of the proper officers in these instances; because it is a discretionary act which is to bind the inhabitants; and if the proper number of overseers had been appointed, the inhabitants would have had the benefit of their consideration (which the statute intended to give them), whether this were a proper certificate to be granted. Therefore, the stat. of *Car.* 2. having required that not less than two overseers should be appointed for a township, and the stat. of King *William* having required the certificate to be executed by the overseers where there are no churchwardens, and there having been but one overseer appointed for the township, by whom this certificate was granted, I am of opinion that it was void. — LAWRENCE J. Two questions have been made, 1st, Whether the churchwardens of the parish at large should have joined in granting the certificate? 2. Whether a certificate made by one overseer of a township, where there is only one appointed, be good? As to the first, there is no necessity for entering into it on this occasion. If there had been, I should have thought, that what had been urged by the counsel in support of the order of Sessions was very material. And I believe it has not been usual for the churchwardens of the parish at large to join in granting certificates with the overseers of particular townships within it maintaining their own poor. However, it will be sufficient to determine that question when it necessarily arises, which is not the case here; because I think that this certificate was at any rate bad, having been granted by only one overseer, who was alone appointed for the township of *S.*, whereas the stat. 13 and 14 *Car.* 2. expressly requires two to be appointed for every township; and unless the certificate pursue the statute it is void. For an authority cannot be executed by one, which is given by the statute to more than one. But it is said to have been decided in *Rex* v. *Wymondham* (*a*) that it is sufficient if the certificate be granted by a majority of the churchwardens and overseers *de facto*, though not *de jure*. The case, however, does not go that length. It appeared there that the certificate had been granted by two churchwardens and four

See 1 & 2 *G.* 4. c. 32.

(*a*) *Ante*, pl. 723.

overseers, where it had been usual to have four of the first and eight of the latter prior to a certain period when the parish was incorporated with others. It was contended there at the bar, that if there had been an appointment of any other than those four overseers, it must have been void, as not warranted by the stat. 43 *E.*, and therefore the certificate must be taken to have been granted by a majority of the legal officers. In answer to which Lord *Kenyon* observed, that if the legality of their appointment were under consideration, it would be impossible to distinguish between the first and the last, and to say that the four first only were legally appointed. But then he went on to state that it did not appear that in fact there were 12 parish officers at the time the certificate was granted: but that it would be nugatory to send the case down again to the Sessions to find that fact, as at any rate he thought that the certificate was discharged by the subsequent act of the pauper. Therefore the conclusion to be drawn from the whole rather is, that in his opinion, if it had been necessary to have had the fact found by the Sessions, and they had returned that there were twelve parish-officers at the time, the certificate would have been bad, and advantage might have been taken of the defect in that collateral procedure. —LE BLANC C. J. We are called upon to consider the validity of an act done by one *J. W.*, being the only overseer at the time of the township of *S.*; and the question is, Whether the act done by him will bind the township? Now, the certificate not being executed by any churchwardens can only be good, if at all, under the stat. of *Car.* 2., which enables overseers to be appointed for townships; the stat. of King *William* enabling a certificate to be granted by the overseers where there are no churchwardens: but as it is not executed by churchwardens and overseers, it cannot be supported with reference to the stat. 43 of *Eliz.*, appointing such officers to act for the government of the poor. And I also think the appointment was void, taking it to be made under the stat. 13 & 14 *Car.* 2.; because that requires at least two overseers to be appointed; and it is not stated that *J. W.* was originally appointed with another overseer, and that such other overseer had died before that time; but that *J. W.* was the only overseer appointed for the township during that year. Therefore, without considering whether it were necessary for the churchwardens of the parish at large to join in the act, at all events this certificate was bad, being only made by one overseer of a township, who had no authority by the act of parliament. It will be sufficient to decide the other question when it becomes necessary to do so. But for the present I think there is considerable weight in the arguments urged against the necessity of the churchwardens of the parish at large joining in the certificate with the overseers of the township. If it were deemed necessary, they would in many instances have clashing interests. Therefore at present I do not consider that they were such churchwardens whose concurrence in the certificate was required by the stat. 8 & 9 *W.* 3. — LAWRENCE J. added, that he did not mean to have it understood that he had given it as his opinion that it was necessary for the two overseers to be appointed by the same instrument. The case negatived the appointment of more than one. — Order of Sessions quashed. (*a*)

(*a*) *Vide* Rex *v.* Atkins, 4 T. R. 12.

Where one of two *churchwardens* was also appointed *overseer* of the poor, a certificate of settlement signed by both is a nullity.

726. *Rex* v. *St. Margaret, Leicester, E. T.* 47 *G.* 3. 8 *East*, 332. — The question before the Court in this case was, Whether the following certificate was valid: "*Nottinghamshire*, (to wit) we, "*J. K.* and *S. S. churchwardens and overseers* of the poor of the "parish of *G.*, in the county of *N.*, do hereby own and acknow- "ledge *J. H.* and *E.* his wife, to be our inhabitants legally settled, "&c. (concluding in the usual form, bearing date *June* 26, 1775, "properly directed, signed and sealed by the said *J. R.* and *S. S.* "and duly allowed by two justices.)" It was proved that *S. S.* and *J. R.* were appointed the two churchwardens for *Gotham* parish, for the year 1775, and that the said *S. S.* was also appointed the sole overseer in the same year. — THE COURT thought the case too clear to admit of an argument, referring to *Rex* v. *Clifton*. (*a*) — LORD ELLENBOROUGH, C J. The words of the stat. 43 *Eliz. c.* 2. are, that the churchwardens of every parish, and four, three, or two substantial householders there, shall be called *overseers* of the poor, and are to take charge of them. Then the Certificate Act, 8 & 9 *W.* 3. *c.* 30., requires that a certificate shall be granted under the hands and seals of the churchwardens and overseers of the parish, or the *major* part of *them*; how then can we say that that which is directed to be done by two overseers at least, joined to the churchwardens, or the major part of them, can be done by one overseer and one churchwarden only; or by two churchwardens, one of whom acted in the double character of churchwarden and overseer? — LAWRENCE J. The statute of King *William* which must govern us in this question, does in no event give the authority of granting certificates to the churchwardens without the overseers.

(*a*) *Ante*, pl. 725.

A parish certificate, purported to be granted in 1761, by A, the only churchwarden, and B, the only overseer of the parish: Held, that it must now be taken to have been a good certificate, because it may be intended in favour of such an instrument, that by custom there was only one churchwarden in the parish, and that two overseers had been originally appointed, but that one of them died, and that the certificate was

727. *Rex* v. *Catesby, E. T.* 5 *G.* 4. 2 *B.* & *C.* 814. — Upon appeal against an order for the removal of *George Cox*, his wife and child, from *B.* to *C.*, the Sessions confirmed the order, subject, &c. The respondents produced a certificate, dated the 10th of *May*, in 1761, stating that *W. G.*, the only churchwarden, and *E. W.*, the only overseer of the poor of the parish of *C.*, did thereby certify to the churchwardens and overseers of the poor of the parish of *B.*, that they did own and acknowledge *T. C.* the younger, of *B.* aforesaid, butcher, and *Mary* his wife, and *R. J.* and *E.*, their children, to be inhabitants legally settled in their said parish of *C.* The certificate then proceeded in the usual form, and purported to be duly executed by the churchwarden and overseer, and was allowed by two justices of the peace. It was proved that *T. C.*, in the certificate mentioned, had a son named *T.*, who was born after the certificate was granted, and that the pauper *G.* was the son of the lastmentioned *T.* — BAYLEY J. I am of opinion, both upon the authorities cited (*b*), and upon the principles to be deduced from them, that this is a good certificate. It is signed by one churchwarden and one overseer only; and it is said that by law there must be two overseers at least, and two churchwardens, and therefore that this certificate is not signed by a majority of the overseers and churchwardens, as required by law. There are two statutes which bear upon this subject, the 43 *Eliz. c.* 2., and the 8 & 9 *W.* 3. *c.* 30. The first section of the 43 *Eliz. c.* 2. § 1. requires that there should not be

(*b*) Rex *v.* Hinckley, *ante*, pl. 593. Rex *v.* Earl Shilton, *ante*, Vol. i. pl. 731.

more than four, nor less than two overseers of every parish. Section 5. authorises the said churchwardens and overseers, *or the greater part of them*, to bind poor children apprentices, &c. The 8 & 9 *W.* 3. *c.* 30. § 1. directs that a parish certificate should be under the hands and seals of the churchwardens and overseers, or *the major part of them*. Both these acts require the concurrence of the churchwardens and overseers, or the greater part of them. The decisions, therefore, which have taken place upon the 43 *Eliz.* § 5. with respect to binding out poor apprentices, are applicable to cases arising upon certificates under the 8 & 9 *W.* 3. *c.* 30. § 1. In *Rex* v. *Hinckley*, an objection was taken to a parish indenture that it was signed only by one churchwarden and one overseer. The Court, however, held, that if by any intendment of law the indenture could be good, that intendment ought to be made, and they did intend that as, by custom, there might be only one churchwarden in a place, there were only one churchwarden and two existing overseers at the time when the indenture was executed, and therefore that the two who did execute, were a majority sufficient to bind the apprentice. Generally speaking, there ought to be two churchwardens in every parish; but by custom there may be one. By law, two overseers must be originally appointed; but the two overseers so appointed, may by death have been reduced to one, and in that case one overseer and one churchwarden would constitute the major part of the persons originally appointed. I think, therefore, that in this case, we may intend that at the time when this certificate was granted, *W.* was the surviving overseer of two who had been originally appointed. This case differs from that of *Rex* v. *St. Margaret's, Leicester* (*a*), because there it was stated as a fact in the case, that one overseer only had been originally appointed. So in *Rex* v. *Clifton* (*b*), it was found that at the time of granting the certificate, *W.* was the only overseer appointed for the township. The cases of *Rex* v. *Hinckley* and *Rex* v. *Earl Shilton*, establish that a binding of a poor apprentice by one overseer and one churchwarden may be good. Besides the general rule of law as to presumption is, that a thing is not to be presumed *non rite actum*, and as the law absolutely requires an appointment of two overseers in the first instance, we ought, in the absence of any evidence to show what the real appointment was, to presume that the parties had conformed to the law, that two overseers had been originally appointed, and that one had died before the certificate was granted; and if we make that presumption, then the certificate must be taken to have been granted by the majority of the churchwardens and overseers, as required by the statute. For these reasons, I think that the order of Sessions ought to be confirmed. — HOLROYD J. I am of opinion, both upon the authorities cited, and upon principles of law which ought to govern this case, if those authorities had not existed, that this is a good certificate, or rather that the justices might legally intend it to be a good certificate. It has been submitted to by the parish for a period of 60 years. If any intendment, therefore, can be made to support it, it ought to be made. Now, as by law, two overseers must have been originally appointed, the instrument could not correctly describe *Webb* as an overseer, unless he had been appointed jointly with another. The presumption to be raised, therefore, is only in favour of

granted before the vacancy in the office was filled up.

(*a*) *Ante*, pl. 726.

(*b*) *Ante*, pl. 725

what is stated on the face of the certificate. If upon the trial of an issue, whether *Webb* was an overseer of the parish of *C.* or not, it had been proved that he was the only person appointed to the office of overseer for that year, the jury must have found that he was not an overseer at all, because the law requires that there should not be less than two overseers originally appointed. The certificate, therefore, would have been bad, notwithstanding the length of time during which it had been submitted to by the parish. I am of opinion, that in favour of what appears on the face of the certificate, the justices were well warranted in drawing the inferences that two overseers had been originally appointed, and that one had died before the certificate was granted. The authorities cited in the argument fully establish that every intendment ought to be made in favour of the certificate; but independently of those authorities, I think, that upon established principles, the Sessions have drawn the proper conclusion. — LITTLEDALE J. It appears on the face of the certificate that it was granted by only one churchwarden and one overseer. Now that is not sufficient, unless the law warrants the intendment of some facts, by means of which one churchwarden and one overseer may at that time have been the majority of the churchwardens and overseers. Now, by custom, there may be only one churchwarden, and therefore, in this case, we may presume that one only was appointed. The appointment of one overseer would be illegal, and therefore we must intend that two were originally appointed, and that one of them had died before the certificate was granted, and that no other had been then appointed in his stead; and if we may intend those facts, then the certificate was granted by a majority of the body. It is a general intendment of law, that every thing is to be presumed rightly done unless the contrary appear. It is also an intendment of law, that a party who has been proved to have been alive at a given date, is presumed to be alive for a certain period afterwards unless the contrary be shown. These two intendments clash in this particular instance; but I think that, in favour of what appears on the face of the certificate, the more general intendment ought to prevail. In *Rex* v. *Earl Shilton*, there could not be any such intendment, because it was shown on the face of the case that the appointment originally was bad. It lies upon the party insisting that it is void to prove that it is so. In *Rex* v. *Morris* (a), an order of justices appointed *A.*, of the parish of *B.*, to be overseer of the poor of the hamlet of *C.*, was held to be a good appointment; and Lord *Kenyon* expressly lays it down, that every thing is to be intended in support of an order of justices. Upon the same principle, I think that every thing ought to be intended in favour of a certificate sanctioned by two justices, and, therefore, that the order of Sessions was right. — Order of Sessions confirmed.

(a) *Ante*, vol. i. pl. 6.

III. *Of the Effect and Extent of Certificates.*

A certificate is not binding upon the certifying parish, if the pauper has gained a settlement elsewhere.

728. *Harrison* v. *Lewis*, *E. T. 5 W.* 3. 3 *Salk.* 253. — The case was: *Lewis* with his wife and children were settled in the parish of *A.*, and from thence they removed to the parish of *B.*, where the husband gained a settlement; but the parish of *A.* having given a *certificate* to the parish of *B.* that they (the said parish of *A.*)

would receive them again whenever *L.* should become chargeable to *B.*, and he now being chargeable, they obtained an order from two justices to send him and his wife and children to *A.* again; which order was confirmed upon an appeal to the Sessions, and he was sent thither accordingly. But the order was quashed; for though it was according to the *agreement* made between the two parishes, yet a *private agreement* in this case shall not alter the law.

Certificated persons not removable till actually chargeable.

3 T. R. 48.

729. *Little Kire* v. *Woodfall*, *T. T.* 2 *Ann.* 2 *Salk.* 530. — A parishioner of the parish of *A.* came to *B.* with a certificate, pursuant to the 8 & 9 *W.* 3. *c.* 30., and because he was *likely to become chargeable* to *B.*, the justices, reciting the matter, sent him back to *A.* — WINNINGTON moved to quash the order, because he is not removable until he is *actually chargeable* by the express words of the 8 & 9 *W.* 3. *c.* 30. — ET PER TOTAM CURIAM: the order was quashed.

A certificate concludes the parish giving it only as against the parish to which it is given.

S. P. determined, on the authority of this case, Rex v. Lubbenham, *post*, pl. 741.

730. *All Saints* v. *St. Giles*, *T. T.* 1 *Ann.* 2 *Salk.* 530. — Upon an appeal a special order was made and the case was: One was born at *A.*, and came and lived at *B.* some years, but never gained any settlement there; then he removed to *C.* for convenience of getting his livelihood, and *B.* gave him a certificate according to the late act. The man became chargeable, and was sent back to *B.*, who found that he was last legally settled at *A.*, and sent him thither. — ET PER HOLT C. J. The reason of the act of parliament about certificates, was only to encourage parishes where poor persons were minded to go, to receive them; and therefore it enacts, "That when the poor person shall be chargeable, the parish which gave the certificate shall receive and provide for him as a settled inhabitant," which words lay an obligation upon the parish which gave him the certificate to receive and provide for him against that parish which they gave the certificate to. But as to all other parishes, they are as they were before, for the conclusion is only by reason of the words of the act of parliament, which extend only to the parish to which he was sent; by consequence the conclusion can extend no further. — POWELL J. This way of giving certificates was a thing commonly practised before this act of parliament, and it was made only to oblige the parish who gave the certificate to receive him again of the other parish to which the certificate was given; but the intent of that was not to make a new settlement which was not before. — BUT PER HOLT C. J. Such certificate is a mighty evidence before the justices; and so is a demand and refusal of a conversion, which yet being specially found, will not be a conversion.

A certificate concludes the parish that gives it as to all facts therein mentioned.

Fortescue, 304.

731. *New Windsor* v. *White Waltham*, *T. T.* 5 *G.* 1. *Str.* 186. — *P.*, being legally settled in the parish of *Waltham*, where he had lived two years with a woman who was reputed his wife, went with a certificate from *Waltham*, owning them as man and wife, into the parish of *Windsor*, where they had six children. Then the man died, and the woman swearing they had never been married, the judges adjudged the children to be bastards, and settled in *Windsor*, where they were born. — PRATT C. J. We are all of opinion, that the certificate is conclusive to the parish of *Waltham*, and they are not to be admitted to dispute the validity

of the marriage; and, therefore, the six children, being actually chargeable to *Windsor*, must be sent back to *Waltham*.

A certificate does not exclude the pauper from gaining a settlement in a third parish. 2 Sess. Cas. 209. S. C. Burr. S. C. 154. See R. v. Bishopside, *post*, pl. 736. R. v. Lubbenham, *post*, pl. 741.

732. *Rex* v. *Petham*, *M. T.* 14 *G.* 2. *Str.* 1147. — Upon a special order it was stated, that the pauper was bound to a certificate-man in *T.*, and after living with him there two years, was by him assigned over to a parishioner of *L.*, with whom he inhabited and served for the remainder of the seven years. And the question arose on 12 *Ann. st.* 1. *c.* 18., which says, the apprentice of a certificate-man shall gain no settlement; Whether the assignment could give him one? — And THE COURT were all of opinion he had gained a settlement in *L.*; for the act has not made the binding void, but has only taken away one of the consequences of such binding for the sake of the certificated parish. It never intended to meddle with the case of a legal parishioner's apprentice; and when once there is an assignment to such an one, it is the same as if it had been an original binding: the true construction of the statute is, that in respect to the certificated parish such binding and inhabitation shall give no settlement.

A certificate extends to after-born children by an after-married wife. S. C. Str. 1165. 2 Sess. Cas. 283. See R. v. Hampton, *ante*, pl. 595.

733. *Rex* v. *Sherborne*, *E. T.* 15 *G.* 2. *Burr. S. C.* 182. — *H. E.*, father of *G. E.* the pauper, came by certificate from *T.* into *S.* with his wife and family; by which certificate, the said *H.* and his wife and family were owned to be legal inhabitants of *T.* In about two years afterwards his wife died, and shortly after he married a second wife, by which second wife he had the pauper *G. E.*; which said *G.* when he was about 16 years of age, was hired for a year, and served that year in the said parish of *S.* The principal question was, Whether the son of a certificate-person, born after the certificate, can gain a settlement otherwise than a certificate-person himself can? — And BY THE COURT: The 8 & 9 *W.* 3. *c.* 30. extends not only to the certificate-man himself, but likewise to all his family and all his children, whether born before or after the certificate. And the 9 & 10 *W.* 3. *c.* 11. declares what shall gain them a settlement in that parish to which they come by certificate, and restrains it to two methods only, which it specifies; and service is neither of these two methods to which it is restrained.

See R. v. Alfreton, *ante*, pl. 596.

If a parish give a certificate to a man and his wife, such parish cannot afterwards controvert the fact of their marriage. S. C. 2 Sess. Cas. 200. Str. 1239.

734. *Rex* v. *Headcorn*, *T. T.* 19 *G.* 2. *Burr. S. C.* 259. — The parish of *M.* gave a regular and proper certificate to the parish of *H.*, acknowledging *B.* and *M.* his wife to be inhabitants legally settled in their town. In fact, *B.* was, 15 years before his intermarriage with her, lawfully married to one *M. L.*, who was living and appeared at the Sessions; he afterwards married *M. B.* (the person now removed at his wife). But the churchwardens and overseers of *Maidstone*, at the time of granting the certificate, believed *M. B.* to be his lawful wife; not knowing, nor having ever heard, that he had any other wife. The lawful wife, *M. L.*, and her three children by him were, after the certificate was given, removed to *Maidstone*, and maintained there. — LEE C. J. It appears sufficiently certain that *M. B.* was the woman certificated under the description of "*M.* his wife." She was received under this certificate: they cohabited, and had children under it, at *H.* *Maidstone's* having received and provided for the true and lawful wife can make no difference: they were bound to that, by the husband's being their parishioner. But it must depend on the certificate only, whether *Maidstone* be bound to provide for the

other woman and the children by her. The question does not turn upon the doctrine of *estoppels*, considered at large and at common law; but on the certificate given under the act of parliament. This certificate is a most solemn acknowledgment by the parish who gave it, that the parties who are the subject of it are their legally settled inhabitants; it is a sort of an adjudication that they are so; and when the persons certificated, or their children, become actually chargeable, the parish who gave the certificate are bound to receive them. In the case of *Honiton* v. *St. Mary-Axe*, *Powell* J. compared the certificate to an acknowledgment upon record. Now, the parish of *Maidstone* have, by this certificate, expressly acknowledged *M. B.* to be their legal inhabitant; and the parish of *H.* were thereupon bound to receive her. Therefore, when she becomes chargeable, the parish of *Maidstone* are bound to provide for her and her children by *B.* And so was the determination in the case of *New Windsor* and *White Waltham.* (*a*) THE WHOLE COURT agreed in opinion and said, there was no difference between this case and that of *New Windsor*, except one that was not material, *viz.* that there, the man and woman never were married at all; but here, they were actually married, but not legally. In that case it was holden, that *White Waltham* was not at liberty, contrary to their own certificate, to controvert the certificated persons being man and wife; now here the certificate is in the same manner as that was. In the case of *Nympsfield* and *Woodchester* (*b*), *Nympsfield* having received a man and woman as man and wife, without appealing, it was holden, that they were not at liberty afterwards to controvert the marriage of the father and mother, in a question about the settlement of the children. Indeed, the certificate was not there attempted to be controverted as to the man and woman; but only as to the children; but the settlement of the children being derivative, was holden to be in the parish which gave the certificate to the father and mother, as man and wife. In the present case, *Maidstone*, say they, were deceived; but it was their own fault or folly if they were so; and they deceived *H.*; therefore they ought to suffer, and not *H.*

(*a*) *Ante*, pl. 731.

(*b*) *Ante*, pl. 405. n.

735. *Rex* v. *Bray*, *H. T.* 19 *G.* 2. *Burr. S. C.* 259. — The father of the pauper came by certificate from *S.* to *B.*; after which, the said pauper was born, and at the age of 20 years was hired for a year, and served the same in *B.* It was objected, that the son being born after his father came from *S.* to *B.*, cannot be considered within the words of the act as coming into the parish by certificate, and being 20 years of age he ought not to be considered as part of his father's family, and dependant upon his settlement. — But BY THE COURT, The case of *Rex* v. *Sherborne* is in point (*c*), and was settled upon good reason; because, as the son has the advantage of the certificate, and cannot be removed until actually chargeable, so he ought on the other hand to be bound by the terms of it. (*d*)

Children born under a certificate are included.

S. C. 1 Wils. 121

(*c*) *Ante*, pl. 738.

736. *Rex* v. *Bishopside*, *T. T.* 28 *G.* 2. *Burr. S. C.* 381. — *J.* being settled in *M.*, went from thence, by a certificate, to *R.*, in the township of *B.*, where he resided for some years. Afterwards, about 18 years ago, he purchased a freehold house for the sum of

A certificate can have no effect as to a *third parish*.

S. C. Sayer, 231. Rex v. Lubbenham, *post*, pl. 741.

(*d*) The like point was also adjudged in the case of Buckingham v. Maid's Moreton, Burr. S. C. 314., as a point clearly determined and settled.

10*l.*, in the township of *D.*; and left *B.*, and went to inhabit in *D.*; to which place he carried his certificate, and delivered it to the proper officer there. The question was, Whether any other parishes could be concerned in this certificate except the parishes of *M.* and *R.*? and THE COURT was clearly of opinion that they could not; that it was not necessary for *J.* to carry it to the parish of *D.*, for that he had a right to go to his estate there without it; nor proper, for it ought to have been left with the parish-officers of *R.* to whom it was directed: and that no third parish can claim any benefit from the provision of a certificate which was only intended to extend to that single parish to which the pauper goes from that wherein he is settled.

A certificate does not prevent the son, though born under the certificate, from gaining a settlement by hiring and service in a third parish. S. C. Say, 228.

737. *Rex* v. *Horsley*, *T. T.* 28 *G.* 2. *Burr. S. C.* 385. — The only question was, Whether the son of a certificate-person, born in the parish to which his parent came by certificate, could gain a settlement in a third parish by hiring and service for a year? — THE COURT were clear that this gained a settlement in the third parish; and that the case of *Silton* v. *Wincanton* was in point, only with this immaterial difference, that there the son's settlement was gained by apprenticeship, and here by a hiring and service.

A certificate which takes notice of the woman's being then *unmarried* and *with child*, and acknowledges the child she then went with to be legally settled in the parish certifying, is good, and settles such child in the parish, although born a bastard in another.

738. *Rex* v. *Ipsley*, *M. T.* 9 *G.* 3. *Burr. S. C.* 650. — *A. Causier* came from *S.* to *I.*, under a certificate in the words and figures following, "*W.* — To the churchwardens and overseers of the "poor of the parish of *I.* in the county of *W.*, or to any or either "of them: We *R. Cooks* and *J. W.*, yeomen, churchwardens of "the parish-church of *S.*, in the said county of *W.*, and *R. R.* and "*T. W.*, overseers of the poor of the said parish of *S.*, yeomen, do "hereby, for ourselves and successors, certify, own, and acknow-"ledge, that *A. Causier*, spinster, and the child or children that "she now goeth with, are our inhabitants legally settled with us "in our said parish of *S.*; and if at any time hereafter the said "*A. Causier*, or her child or children which she now goeth with, "shall become chargeable to and ask relief of your said parish of "*I.*, we the said churchwardens and overseers of the poor of our "said parish of *S.* do hereby promise, for ourselves and successors, "that we will, when requested by any of you, receive them and "relieve them, and provide for them as our inhabitants, according "as the law in that case requires." *A. Causier* was delivered of *J. Causier* in *I.*, and he afterwards married *M. Causier*: two justices removed her and her children from *I.* to *S.*; but the Sessions on appeal being of opinion, that the certificate could not operate or extend to the bastard child, being then *en ventre sa mere*, quashed the order and stated the above case. It was contended in support of the opinion of the Sessions, that this was no certificate within the act of 8 & 9 *W.* 3. *c.* 30. The undertaking relates to a non-entity, an embryo. An unborn child cannot be personally certificated. It is no part of the parent's family: and the act only obliges the certifying parish to provide for the pauper mentioned in the certificate, together with his or her family. This child, when born, would be only a bastard: but a bastard is nobody's child; and could not, therefore, be a part of anybody's family, in the sense of the act of parliament. The makers of the act had not the case of a bastard in their contemplation; nor is an unborn bastard the object of a certificate. A bastard is settled where it is born; even though it be the bastard of a certificated person; and even although the certificate expressly undertake

" to provide for the woman (who was pregnant at the time) and " her child." So that the bastard would undoubtedly be settled in the parish where born, unless the certificate particularly recognize and expressly specify the special circumstances of the parent's case. The only question is, Whether its being particularly specified and recognized in the manner as it is in the present certificate, makes any difference? — THE COURT unanimously held, that the parish of *S.* were bound by this certificate, which takes notice of the woman's being then unmarried and with child, and acknowledges the child she then went with to be legally settled with them in their parish. — AND LORD MANSFIELD observed, that the woman was very big with child, and was understood by both parishes to be so; and *S.* expressly promised to provide for the infant she then went with; therefore, they ought to be bound by their certificate. An infant *en ventre sa mere* may be, to a variety of purposes, considered as *born;* of which he specified a great number of instances. (*a*)

(*a*) See *ante*, pl. 15.

739. *Rex* v. *Tostock*, *H. T.* 13 *G.* 3. EDITOR's *MSS.* — The case stated, that *Edward P.*, otherwise *J.*, was born at *T.*, of the body of *Elizabeth P.*, spinster, an inhabitant of the parish of *T.;* that *Edward J.*, an inhabitant of the parish of *I.*, but then residing in *T.*, was the putative father of the said *Edward P.*, otherwise *J.;* that soon after the birth of said *Edward P.*, otherwise *J.*, *Elizabeth P.*, at the parish of *T.*, was married to said *Edward J.;* that some short time after the said marriage, the parish-officers of *T.* desired the said *Edward J.* to get a certificate from *I.;* whereupon *Edward J.* applied to the parish-officers of *I.* for such a certificate for himself and his wife, and the said *Edward P.*, otherwise *J.*, the pauper, his son, *without informing them that the said* Edward P., *otherwise* J., *was born a bastard, and that the parish-officers knew nothing thereof but from such information of said* Edward J.; that *I.* granted a certificate in 1746, acknowledging *Edward J.*, *Elizabeth* his wife, and *Edward* the pauper, by the name of *Edward* their son, to be their parishioners. — Mr. MANSFIELD contended, in support of the order of Sessions, that the certificate was improperly obtained, upon the suppression of a fact which ought to have been communicated to them at the time the certificate was asked for; which was, that the son was born a bastard at *T.*, of which they were not apprised when they gave a certificate owning him to be their parishioner; that there never was a case where the certificate was held to be conclusive where it was obtained by fraud or the suppression of facts, but where they have granted them by mistake, for against mistake they might have been guarded: this was the case of *White Waltham* (*b*), and several others. This is a fraud on the face of the order, and the justices need not state fraud. — ASTON J. It does not appear that the pauper desired the father to get a certificate for her son as well as himself. LORD MANSFIELD: This is the case of *Rex* v. *Headcorn*. (*c*) Unless you can show, that the pauper desiring a certificate as to the son, and that the pauper receiving the certificate, colluded with the master, though the justices should not have found fraud, yet if the pauper to whom the certificate was granted had desired the son to be included in it, THE COURT would have understood it to be fraud. If, Mr. *Mansfield*, you can maintain your ground, and prove a fraud, to be sure you will be right. — WILLES and ASH-

A certificate procured without fraud at the desire of the parish where the parties reside, is conclusive.

S. C. Burr. S. C. 737.

(*b*) *Ante*, pl. 731.

(*c*) *Ante*, pl. 734.

HURST J. concurring, the rule was made absolute, and the Sessions' order quashed. — *N. B.* The words printed in *Italics* are those of the order, though they seem to imply a contradiction.

Renting a tenement of 10*l.* a year, and 40 days' residence, will avoid a certificate, although the certificate be granted after *the taking*, and before the expiration of *the* 40 *days*.

S. C. Cald. 426.

740. *Rex* v. *Findern*, *E. T.* 24 *G.* 3. EDITOR's *MSS.* — Two justices removed the paupers from *M.* to *F.* The Sessions, on appeal, confirmed the order, and stated a special case; the substance of which was, That the pauper lived one month in the parish of *M.*, on a tenement of 10*l.* a year; after the expiration of which time the parish of *F.* gave him *a certificate*. The pauper continued to reside on this tenement till the end of the year; and there was no fresh taking of the tenement after the certificate was granted; for which reason the Sessions were of opinion, that he gained no settlement in *M.* On this order being removed into the Court of King's Bench, a rule was granted to show cause why the order of Sessions should not be quashed. — BOWER, in support of the rule, contended, that the pauper having hired a tenement of 10*l.* a year became irremovable, and, therefore, did not want a certificate; for he had then an inchoate right, and afterwards became an inhabitant of *M.*, though he had not then lived long enough there to gain a settlement. — The Court took time to advise; and on another day WILLES J. gave judgment. — In this case it is to be observed, that the pauper came into the parish of *M.* without a certificate; and before he obtained it he rented a tenement in the parish of 10*l.* a year. This made him an inhabitant, and, therefore, he had no occasion for a certificate. It is not stated that the parish of *F.*, at the time they granted the certificate, knew that he rented a tenement of 10*l.* a year; and if they had known it, they would in all probability have refused to grant one. It is true, that he had not lived long enough on this tenement to gain a settlement; but by the construction of the statute 9 & 10 *W.* 3. *c.* 11. this seems to make no difference. The words are, "that no person or persons whatsoever who *shall* come into any parish by "any certificate shall be adjudged, &c. to have a settlement, "unless he or they *shall* really and *bonâ fide* take a lease of a "tenement of the value of 10*l.* a year." Now the act does not say whether the taking shall be before or after the certificate. The reality of the taking, and the fairness of the transaction, in the present case, are not disputed. He did *really* and *bonâ fide* take a tenement of the value mentioned. We are, therefore, of opinion, that notwithstanding the certificate was granted after he came in and took the tenement, he thereby gained a settlement. — The rule was accordingly made absolute.

A certificate is only conclusive upon the parish granting it with respect to that parish to which it is granted; though it is *primâ facie* evidence as to others.

See Rex *v.* Bishopside, *ante*, pl. 786.

741. *Rex* v. *Lubbenham* (*a*), *E. T.* 31 *G.* 3. 4 *T. R.* 251. — The pauper *E.* was married about 17 years ago to *T. H.*, who was settled at *O.* Two years afterwards *T. H.* was convicted of a highway robbery, and condemned, but reprieved on his enlisting as a soldier: he went abroad, and five years after that the said *E.* (hearing that he was dead) was married by banns to *T. P.* at *L.* On the 21st day of *October* 1782, about a twelvemonth after, *H.* returned (whilst the said *T. P.* and *E.* were residing at *T.*); the said *P.* and *E.*, who were then living together as man and wife, went together to the parish-officers of *L.* for a certificate to *T.*, who directed the said *P.* and the said *E.* to be included in the said certificate, and granted it accordingly; acknowledging the said

(*a*) See Rex *v.* St. Martin at Oak, *post*, pl. 780.

T. P. and his wife (without mentioning her christian name) to be their parishioners legally settled in the said parish of *L.*; and they the said pauper *E.* and *P.* returned with it to *T.* *T. P.* was never married to any person but the said *E.* *Hephzibah* was born during the cohabitation of *P.* and *E.* at *L.*, and there baptized as the daughter of the said *T. P.* and *E.* his wife. — LORD KENYON C. J. In the first place, without considering the effect of the certificate, there is no doubt but that the second marriage was void, and consequently that the settlement of the pauper *E.* continued where her first husband was settled. But it is stated, that she afterwards contracted a marriage *de facto* with a person whose settlement was at *L.*; and that she and her second husband applied to the parish-officers of *L.* for a certificate to *T.*, which was accordingly granted. And, therefore, the question is, Whether that certificate be conclusive against *L.* as to all the world, or only as between the two contracting parishes? Now estoppels in general are not to be favoured; they are to be extended only as far as the positive rules have gone; because the tendency of them is to prevent the investigation of the truth of the case. It is reasonable that a certificate, which is a kind of estoppel, should protect the parish which acts immediately on the faith of it: by the act of the officers of *L.* the parish of *T.* was induced to receive the parties into their parish; but there is no necessity for extending the estoppel any further. In all the cases (*a*), except that of *Honiton* v. *St. Mary Axe* (*b*), the question arose between the parish granting the certificate and the parish to which it was given; that is the only case which extends the doctrine further; and there it is said that a certificate is conclusive on the parish granting it to all the world. But the reason given by Lord Chief Justice *Parker*, "that as all "other parishes are bound to receive the pauper, so the parish "that certifies is concluded as to all other parishes," is not true; for other parishes are not bound to receive the pauper; there must be a particular parish in contemplation at the time of granting the certificate. Therefore, as the reason on which that case was decided fails, we are delivered from the authority of it. Then

(*a*) See All Saints *v.* St. Giles, *ante*, pl. 730.

(*b*) Honiton *v.* St. Mary-Axe, M. T. 9 Ann. Salk. 535. — H. came to *Honiton* with a certificate from the parish of A. After this he went to the parish of B., and was now sent to the parish of A, which then offered to prove that the pauper was settled at the parish of *St. Mary Axe*. The question was, Whether A was bound as to *Honiton* only, or concluded as to all parishes whatsoever? — *Per Curiam*: Before the statute a certificate was only evidence of a private undertaking between the parishes, in the nature of a contract; but now it is a solemn acknowledgement, like the conusance of a fine, and thereby the party is owned to be legally settled there, and that they will provide for him. The statute says, "with his or her family, as inhabitants "of that parish;" and as all other parishes are bound on the certificate to receive him, so the parish which certifies is concluded with regard to his settlement as to all other parishes. It is an adjudication, an acknowledgment of the parish signed by the proper officers, and made before two justices of the peace, who are the proper judges, and upon less evidence could have adjudged it a settlement, by which sentence all parties would be bound, and there would be no remedy but to repeal it. — *N. B.* Mr. Justice *Foster* cited this case of *Honiton* from a manuscript of his own; and said, that it was resolved in this case, that it is final upon the same parish which obtained the first removal, if quashed upon appeal on the merits. For an order quashed upon the merits on appeal is conclusive between the two parishes: if confirmed on the merits, it is final and conclusive upon the appealing parishes against all the world.

what reason is there why the truth of the case should not be inquired into? No injury is thereby done to the third parish; no imposition is practised upon them; neither is there any hardship in it. It would, indeed, be a hardship on *T.* parish, who acted on the faith of the certificate, and who were bound to receive the parties mentioned in it, if the certificate were not conclusive in their favour against *L.*; but that reason does not extend to this parish. Therefore, on that ground, and on the principle that estoppels are not to be favoured, the parish of *L.* ought not to be precluded from inquiring into the truth of the case; and according to the truth of the case it appears, that the pauper *E.* was settled at the place of her first husband's settlement. I am, therefore, of opinion, that the order of Sessions, as far as it respects the wife, should be quashed; but affirmed as to the child, because the fair conclusion from all the facts stated is, that she was a bastard. — ASHHURST J. As it appears that the reason given for the decision in the *Honiton* case is false, we ought to establish the law on the principles of good sense, reason, and justice; and they concur in inducing us to say, that the certificate ought not to estop the parish of *L.* from showing the truth of the case. It ought to be conclusive on that parish as far as it concerns *T.*, to which it was granted; but there is no reason to extend the effect of the certificate, which was only a contract between the two parishes, to a third, which was not bound to receive the persons mentioned in it. — BULLER J. The first point that I shall consider is the situation of the daughter, who must be taken to be a bastard on the facts disclosed in the case. It must be recollected, that we do not proceed by the same rules when we are determining on an order of Sessions as on a special verdict, when we could not say that this child was a bastard unless the jury had found her to be so; but in cases made at the Sessions we are to consider those points which the justices made below, and to assist them in drawing the conclusion which they should have drawn. And on this evidence there is no doubt but that the child is a bastard; she was even so considered by the parents themselves, who baptized her as their child. Then with respect to the mother's settlement, I agree that the second marriage is bad in point of law, and, consequently, the woman must be considered as the wife of the first husband; and the question then is, What effect the certificate has with respect to other parishes besides those by and to which it was granted? The case cited of *Honiton* v. *St. Mary Axe* (*a*) certainly goes the length of saying, that it is conclusive as to all the world against the parish granting it. But, for the reasons granted, that case cannot he supported; and the other case cited of *All Saints* v. *St. Giles* (*b*) is the other way, and is founded on sound reasoning; there it is said that a certificate is only *conclusive* as between the two parishes. What is said by Lord *Holt* at the end of that case, namely, that a certificate is *also mighty evidence before the justices* as to all other parishes, is true as far as it goes; and in latter cases it has been carried beyond what he meant, for though it be mighty evidence it is not conclusive. I am clearly of opinion, that the authority of the case of *All Saints* v. *St. Giles* ought to guide us, and that public convenience also weighs very strongly on that side of the question. In many parts of the kingdom parishes have a great objection to

(*a*) *Ante*, p. 619. note (*b*.)

(*b*) *Ante*, pl. 780.

granting certificates; and one reason is, lest they should be thereby concluded as to all other parishes. But it is clearly for the benefit of the public that the granting of certificates should be encouraged; because by that mean a pauper is enabled to gain a livelihood in another parish, when he cannot in his own; and the more generally they are held to be conclusive, the more reluctant will parishes be to grant them; but if they be only conclusive as between the two parishes, the use of certificates, which are become very beneficial, will become more general. And of late years this Court have proceeded upon the same principle in those cases where they have determined that a certificate is discharged by the certificated person leaving the parish to which it was given. — GROSE J. The case of *Honiton* v. *St. Mary Axe* cannot be supported, as the ground on which it proceeded fails. The reason given for that determination was, that "all other parishes on that "certificate were bound to receive the pauper;" but that is not warranted either by the words or the true meaning of the act of parliament. (*a*) The words are, "that if any person shall come "into any parish, and bring or deliver to the churchwardens, &c. "of such parish a certificate, &c. such certificate shall oblige the "said parish to receive the person mentioned in the certificate "whenever he shall become chargeable *to the parish to which such* "*certificate was given.*" The case of *All Saints* v. *St. Giles* was decided according to the true meaning and interpretation of that statute; and a later case, which proceeds on false grounds, ought not to overturn it. As, therefore, the certificate in this case is only conclusive as between the two contracting parishes, it appears that the woman is settled at *O.*; and as to her the order of Sessions must be quashed, and confirmed as to the child.

(*a*) 8 & 9 W. 3. c. 30. § 1.

742. *Rex* v. *Darlington*, *T. T.* 32 *G.* 3. 4 *T. R.* 797. — *J. M.*, the grandfather of the pauper's husband, being a settled inhabitant of *D.*, came into the parish of *A. S.* under a certificate from *D.*, dated 13th *July* 1736. During his residence there (amongst other children) he had a son named *T.*, who lived in *A. S.*, as a part of his father's family, except for one year, during which he lived as a hired servant with one *C.* in *A. S.*; after which service he returned to his father; and afterwards married, and had several children, and (amongst others) *T.*, the husband of the pauper *S. M.*; which *T.* lived in *A. S.* till the time of his death. The lastmentioned *T.*, when of the age of 14 years, was hired to and lived as a servant with Mr. *B.* for the space of three years in *A. S.* *J. M.*, the grandfather, some time before the grandson's service with *B.*, returned with his wife to *D.*; leaving behind his son *T.*, with his family, and amongst them his grandson *T.* *J. M.*, the grandfather, and his wife, died in *D.* Neither *S.*, the pauper, or either of her children has, since the death of *T.*, the husband, done any act to gain a settlement. — LORD KENYON C. J. In this case two questions have been made; 1st, Whether by the grandfather's return to *D.* there was an end to the certificate? I am strongly inclined to think that that was not an abandonment. (*b*) If all the family had indeed removed back, that would have been an abandonment; but as his son was left behind, it was a sort of pledge that the certificate was not intended to be abandoned. It is not necessary, however, to determine upon that point, because on the other question I am prepared to give a decisive opinion. And my

A certificate only includes the certificated man, his wife, and those children who live with him; but does not extend to grandchildren.

Rex v. Hampton, *post*, pl. 744. Rex v. Heath, *post*, pl. 762.

(*b*) See Rex v. Sudbury, *post*, pl. 751. Rex v. Taunton, *post*, pl. 752. Rex v. Newington, *post*, pl. 760.

opinion is founded on the words and fair meaning of the statute 8 & 9 *W.* 3. *c.* 30. By the words of that act, the parish to which the certificate is granted, is obliged to receive the certificated person "together with his or her family." Now what is the fair legal import of the word "family:" it is true that in construing a will, and where it is the intention of the testator that it shall extend beyond "the immediate children," it may have that operation: but that is not the sense in which it is used in this act. In common parlance, the family consists of those who live under the same roof with the *pater-familias;* those who form (if I may use the expression) his fire-side. But when they branch out, and become the heads of new establishments, they cease to be part of the father's family. I admit that a certificate extends to the son, on account of the positive words of the act of parliament, he being a part of his father's family (*a*); but when he himself becomes the head of a family, then the words of the statute, public policy, and the convenience of mankind, require that he should no longer be considered as part of his father's family, or be protected by the certificate granted to his father. I am not alarmed at the argument that this tends to the separation of children from their parents; for that is usual with persons in that station of life, who, not being able to gain a livelihood at home, are obliged to go abroad into the world, either as servants or apprentices, after they have passed the age of nurture. It is as beneficial to themselves as it is to the community that it should be so; and their parents themselves will, if they judge rightly, form the same judgment. And this is not a singular instance in which children are taken from their parents; for in the case of parish apprentices, the children are put out by the parish-officers, under the superintendence of magistrates, even without the consent of parents. If this point had been before decided, as was supposed, I should have adhered to the decision; especially as, according to the observation which Lord *Mansfield* frequently made upon these cases, certainty is essential for the guide of the justices of the peace, who carry these laws into execution. But I am not aware of any authority against our opinion; for I know that the *Taunton* case was not considered as deciding the point, that a certificate extends to grandchildren; and this point was not made in *Rex* v. *St. Mary Westport.* Giving full effect to the certificate as far as the words of the act, and the intention of the legislature, go, I think it meets with its boundary line, when it has protected the family of the certificated person (*b*); that is, all those who live with the *pater-familias;* and, consequently, that this grandchild, who was the son of the head of a distinct family, was not prevented gaining a settlement in *A. S.* by hiring and service.—BULLER J. This case gives rise to two questions; first, Whether the certificate were at an end by the grandfather's returning to *D.*? Secondly, Whether grandchildren be within the meaning of the certificate at all? On the first point, I think that the certificate was at an end by the grandfather's return; it was originally granted to him. The man to whom a certificate is granted, is the person whom the legislature had in view; and being granted to him according to the statute, it rightly includes his family; but his family are "those only who live with "him." And, as it happens in the course of time, that some of the children separate from the father, if the father himself return to the

(*a*) See Rex *v.* Sherborne, *ante,* pl. 733. Rex *v.* Bray, *ante,* pl. 735. and Rex *v.* Buckingham, *ante,* pl. 716.

(*b*) *Vide* Rex *v.* Sudbury, *post,* pl. 751.

parish granting the certificate, I think that the certificate is at an end as to all of them. (a) On the second question I perfectly agree with my Lord; and as he has gone into it so fully, I should not have added a word to what he has said, had it not been thrown out in the argument that a different opinion had prevailed in *Westminster Hall*, as well as in many parts of the country. I have often heard it observed by Lord *Mansfield*, and by other Judges, that it would have been a fortunate thing for the public, if the Court, in deciding on settlement cases, had adhered to the strict letter of the acts of parliament, without entering into subtle disquisitions upon the subject, which only tend to perplex the generality of mankind. This case comes before us without any decision upon the point to control our judgment. And, therefore, it must depend on the meaning of the several statutes, which I think is clear. The first is 8 & 9 *W.* 3. *c.* 30.; the object of which is stated in the preamble; "Forasmuch as many poor persons chargeable "to the parish, &c., where they live, merely for want of work, "would in any other place, where sufficient employment is to be "had, maintain themselves and families, without being burdensome "to any parish, &c.; but not being able to give such security as "may be expected upon their coming to settle themselves in any "other place, they are, for the most part, confined to live in their "own parishes, and not permitted to inhabit elsewhere, though "their labour is wanted in many other places, where the increase "of manufactures would employ more hands," &c. Therefore it was intended that if a person, who, from his education or habits of life, could not get a comfortable subsistence in the parish where he was settled, though he could support himself elsewhere, he should be enabled to go into such other parish, where he could procure a subsistence by his labour, &c. The statute then goes on to enact that the parish to which the certificate shall be granted "shall be "obliged to receive and provide for the son mentioned in the cer-"tificate, *together with his or her family*, till they shall be charge-"able, and then it shall be lawful for any such person, *and his or "her children*, though born in that parish, *not having otherwise "acquired a legal settlement there*, to be removed to the parish from "whence such certificate was brought." This act is then confined to the person to whom the certificate is granted, "together "with those who reside with him;" the words are, "together "with his family;" namely, those "who constitute a part of his "family at the time of the removal." Then, under this act of parliament, could the certificated man himself have gained a settlement in the certificated parish? I think he might; for the statute says, that when he is chargeable he may be removed, "not having other-"wise acquired a legal settlement there;" which necessarily implies that he might have gained a settlement in that parish, notwithstanding the certificate. And so the law stood till the passing of a subsequent act, 9 & 10 *W.* 3. *c.* 11.; by which it is enacted, "that no person, who shall come into any parish with a certificate, "shall be adjudged by any act whatsoever to have procured a legal "settlement in such parish, unless he shall take a lease of a tene-"ment of the value of 10*l. per annum*, or shall execute some "annual office in the parish," &c. But in this act there is not a word about the family of a certificated person; and it is, therefore, competent to the children to gain a settlement there by any of the

(a) Rex *v.* Sudbury, *post.* pl. 751.

means by which he could acquire a settlement before. But (I think) the true distinction is, that so long as the children of a certificated person continue a part of his family, they cannot gain a settlement there; that is, they cannot gain a derivative settlement through him. And this is very much confirmed by the stat. 12 *Ann. st.* 1. *c.* 18. § 2., which, after reciting the burdens brought on certificated parishes by the servants and apprentices of certificated persons acquiring settlements there, enacts that no apprentice bound to, or servant hired by and serving with, a certificated person, shall thereby be adjudged to have any legal settlement in such parish. Now if the relatives of a certificated person were included in the stat. 9 & 10 *W.* 3., the statute of *Anne* was nugatory. But, inasmuch as the former act did not extend to apprentices and servants, it was thought necessary to add this clause in the 12 *Ann. c.* 18., to prevent their gaining settlements in the certificated parish. Therefore, considering this question on all these acts together, it seems perfectly clear. But two considerations have been urged to the Court, as probably productive of mischievous consequences from this construction of the statutes; first, it is said, that the children of a certificated person will be liable to be removed, as being likely to become chargeable: whereas, according to the present understanding of the act, they cannot be removed till they are actually chargeable. But that must be qualified in the way I have already mentioned. For I consider it thus, "that you cannot remove the son of a certificated person while he remains a part of his father's family, until he becomes actually chargeable: but when he has quitted his father's family, and is domiciled elsewhere, he may be removed, as any indifferent person." The second inconvenience is, that persons in the same situation with these paupers will be removed, and thereby many of the mischiefs against which the certificate-act meant to guard, will happen: but that argument only applies to cases where a certificate has been granted. Whereas if the certificate-act were to extend to the grandchildren, and the remote descendants of a certificated person, the consequence would be, that no certificates would be granted at all; which would be much more injurious to the public; for the reluctance which at present prevails in different parts of the country against granting certificates would be greatly increased; and thus the object of the certificate-act would be totally frustrated. — GROSE J. Upon the first question, Whether or not this certificate were abandoned? I wish to be understood as not giving any opinion: it is a nice question, and before I determine upon it I should wish to have it argued. But in this case it is unnecessary to consider it. With regard to the other question, Whether it were the intention of the legislature to include grandchildren in the certificate? I have no doubt. Without repeating all the reasons given by my brethren, I will only say, that I am clearly of the same opinion with them; and on this short ground. The word "family" is used in the first part of the act; and, therefore, the operation of the certificate must be confined to the family of the person certificated. But grandchildren are not, properly speaking, of the family of the grandfather, but of his son; for when the son becomes the head of a new branch, and has children of his own, he ceases to be part of his father's family, and his children then form a part of his own family. And that this was the intention of the legislature also

Rex *v.* Alfreton, *ante*, pl. 396.

appears from the word "children" in the latter part of the same section, where it it used as synonymous with "family." It has, however, been objected, that by this construction of the act, the grandchildren will be removed from their parents after the age of nurture; to which my answer is, that whenever such a removal is in contemplation, the father of those children may himself apply for another certificate for him, which will include his family.

A certificate granted to A, and to B, C, and D, his children by name; B's residence in the certificated parish is protected by it, although he afterwards marry and live separate from his father.

Rex v. Batheaston, *post*, pl. 747.

748. *Rex* v. *Testerton*, *E. T.* 33 *G.* 3. 5 *T. R.* 258.—*T. W.*, the father of the pauper, *J. W.*, was a settled inhabitant of *T.*; and on the 22d *April* 1755, he and his family were removed from *R.* to *T.* By a certificate, dated the 20th day of *June* 1755, duly executed, the inhabitants of *T.* acknowledged that the said *T. W.*, with *H.*, his wife, and their seven children by name, of whom *J.*, the present pauper, was one, were inhabitants legally settled in *T.*, when they went and resided at *R.*, under the certificate. *J. W.*, the pauper, lived with his father until he was of the age of 20, when he let himself to *D.*, a farmer in *R.*, for a year, with whom he lived for that time and the following year. The year after the pauper lived as a labourer for a year in *R.*, and resided with his father, *T. W.*, there. He then let himself again to *D.* for a year, and served him that year in *R.*, as also the following year: when he again returned to his father in *R.*, and resided with him 12 months, and worked as a labourer, and then married, and has lived in *R.* ever since, but never with his father since his marriage. *T. W.*, the pauper's father, died in *R.*, about four or five years ago. — LORD KENYON C. J. The decision of the justices at the Sessions, in this case, is not contrary to that in *Rex* v. *Darlington*: there it was held that the certificate, which was granted to the certificated man, extended to his wife and family, to all those who formed a part of the family of the *pater-familias*; but that when his son became the head of a new family, and had children of his own, their residence in the certificated parish was not protected by it. But here the pauper is mentioned by name, in the certificate itself; and he has never gained any settlement, or lived out of the certificated parish since it was given.

A certificate extends to a wife married after it is granted.

744. *Rex* v. *Hampton*, *E. T.* 33 *G.* 3. 5 *T. R.* 266. — In the year 1755, *J. D.*, and *M.* his wife, came to reside in the parish of *H.* under a certificate, dated the 10th of *August* 1755, granted by the churchwardens and overseers of the poor of the parish of *T.*, and duly allowed, &c. acknowledging *J. D.*, and *M.* his wife, to be inhabitants legally settled in *T.* After the granting of the certificate *M. D.* died, and *J. D.* married a second wife, named *Mary*, on the 14th of *April* 1771, with whom he continued to reside in *H.* until the *September* following, and then died, leaving the second *M. D.* him surviving, who continued to reside in the parish of *H.*, and who, on the 8th of *August* 1791, took *R.* an apprentice, being a poor girl of the parish of *St. M.*, who was regularly bound to her by indenture by the parish-officers of *St. M.* till she should attain the age of 21, or day of marriage. The apprentice served under the indentures in *H.* upwards of 40 days, when her mistress, the second *M. D.*, died. — LORD KENYON C. J. The question arises on the statute 12 *Ann. st.* 1. *c.* 18.; and it is, Whether the pauper could gain any settlement in *H.* by serving there under the indentures of apprenticeship to the second wife of the certificated persons from *T.*? and I am of opinion that she

gained no settlement there by such service. It has been decided that a parish-certificate extends to those who were not originally included in it as members of the family at the time when it was given. In the *Sherborne* case (*a*) it was determined that children, born after the granting of the certificate, fell within the protection, if it may be so called, or rather (in that case) the disability of the certificate; and that they could not gain a settlement in the certificated parish by hiring and service. Now, in point of reason, I cannot distinguish this case from that; for, beyond all doubt, the certificate extends to the second wife; she is part of the family of the certificated person. In the case of *Rex* v. *Darlington* (*b*) we said that the certificate only extended to those who constituted a part of the family of the person to whom it was given; and when the children of that person married and settled, and became the heads of other families, the families descending from them could not claim the protection of the certificate, because they were the members of a different family from that to which the certificate was given. But I think that the case of *Rex* v. *Sherborne* decides this; there a child, born after the giving of the certificate, was held to be included in it, and consequently could not acquire a settlement in that parish by hiring and service; so here, the second wife was ingrafted into and formed part of the family of the *pater-familias*; and no apprentice or servant could gain a settlement by serving her in that parish to which the certificate was given. — BULLER J. I confess this case strikes me in a different light from my *Lord Chief Justice*; I think that the reasons given in *Rex* v. *Darlington* decide this case, and prove that the pauper gained a settlement in *H.* The certificate was originally granted to *A.* and his wife, who was named in it; she died, the husband then married another wife, who survived him; and under the second wife this pauper claims a settlement by apprenticeship. I agree with the proposition, according to *Rex* v. *Sherborne*, that when the husband married the second wife she became a part of his family, and as such was protected by the certificate; and so she continued as long as she remained a part of his family. But I consider the certificate operating in favour of the man and his family, as long as any of the members of it remained part of his family: but when the husband died, the wife was no longer a part of his family, but might have been removed back to his parish: and, consequently, any person serving with her there as an apprentice after that time might gain a settlement by such apprenticeship. — GROSE J. The question in this case is, Whether the apprentice of the wife of a certificate person, married to him after the certificate granted, and taking the apprentice after her husband's death, gains a settlement in the parish to which the certificate was given, by a residence of 40 days in that parish under the binding by indenture of apprenticeship? This question depends on the true construction of 8 & 9 *W.* 3. *c.* 30. § 1.; 8 & 9 *W.* 3. *c.* 11.; and 12 *Ann. st.* 1. *c.* 18. § 2. By the first of these (8 & 9 *W.* 3.) "If any person shall come into any parish or place "there to reside, and at the same time bring and deliver to the "officers of the parish or place a certificate, thereby owning and "acknowledging the person mentioned in that certificate to be an "inhabitant legally settled in that parish, township, or place, "every such certificate shall oblige the said parish or place to

(*a*) *Ante*, pl. 738.

(*b*) *Ante*, pl. 742.

" receive and provide for the person mentioned in the certificate, " together with his family, as inhabitants of that parish, and then " and not before it shall be lawful for such person and his children, " though born in that parish, not having otherwise acquired a " legal settlement, to be removed, conveyed, and settled in the " parish or place from whence such certificate was brought."— It is observable, that nothing is contained in this act respecting the wife of the person named in the certificate (unless she is herself named), but as she may be considered to be included in the words " his family;" and yet, undoubtedly, in law, the parish giving the certificate is bound to provide for the wife, whether she be named in it or not, or whether a part of his family when the certificate was given; and the parish to which the man comes cannot remove the wife from the husband, resident under the certificate. Upon this act a doubt arose by what act a person coming to reside within a parish by virtue of a certificate might prove a legal settlement; and in the very next year, the parliament passed an act, 9 & 10 *W.* 3. *c.* 11., to obviate the doubt, and in the preamble stated the doubt in the way I have stated it, *i. e.* by what act a person coming to inhabit or reside within a parish by virtue of any such certificate may procure a legal settlement; and by that statute, which Mr. Justice *Wright*, in *Rex* v. *Sherborne* (*a*), calls declaratory and explanatory, it is enacted, " That no person " or persons whosoever, who shall come into any parish by any " such certificate, shall be adjudged, by any act whatsoever, to " have procured a legal settlement in such parish, unless he or " they shall really and *bonâ fide* take a lease of a tenement of the " value of 10*l.* *per annum*, or shall execute an annual office in " such parish, being legally placed in such office." In *E.* 15 *G.* 2. that case of *Rex* v. *Sherborne* came on; and it arose upon the construction of these statutes. The question was, Whether the son of a certificated person, born of a second wife, after the certificate granted, could gain a settlement in the parish into which the father came with the certificate by service, and in any other mode than the two pointed out by 9 & 10 *W.* 3., *i. e.* renting a tenement of 10*l.* *per annum*, or executing an annual office? It was held that the 8 & 9 *W.* 3. extended not only to the certificated man, but to all his family, and all his children; and they held that this child, although not coming into the parish when the father came, yet being afterwards in the parish as part of his father's family, was within the above statutes. This is, in effect, a determination that not only the persons named in the certificate, but every person of the future family of the person to whom it is granted, are within the above statutes. The case before the Court is, Whether a person, who has served an apprenticeship to a second wife married to a certificated man after he came into the parish, and when she was his widow, thereby gains a settlement? The case of an apprentice to a certificated person is provided for by 10 *Ann. st.* 1. *c.* 18., the preamble of which is thus; I read it, because an argument arises upon it, which appears against my opinion in the present case: " Whereas many persons obtaining " and bringing such certificates do frequently take apprentices " bound by indenture, and hire and keep servants by the year, " who by reason of such apprenticeships and services do gain " settlements in, and become a great burthen to, such parishes,

(*a*) *Ante*, pl. 793.

" &c. though such masters coming with such certificates have by " virtue thereof no settlements in such parishes; for remedy " thereof it is declared and enacted, That if any person whatso- " ever, who, upon or after the 24th *June* 1712, shall be an ap- " prentice bound by indenture, or shall after the said 24th of " *June* be a hired servant to or with any person whomsoever, " who did come into or shall reside in any parish, township, or " place, by means or licence of such certificate, and not after- " wards having gained a legal settlement in such parish, such ap- " prentice by virtue of such apprenticeship, indenture, or binding, " and such servant by being hired by, or serving as a servant as " aforesaid to such person, shall not gain, or be adjudged to have, " any settlement in such parish, township, or place, by reason of " such apprenticeship or binding, or by reason of such hiring or " service therein, but every such apprentice and servant shall " have his and their settlements in such parishes, townships, or " places, as if he or they had not been bound apprentice or ap- " prentices, or had not been a hired servant or servants to such " person as aforesaid." The question then is, Whether the widow, to whom the pauper was an apprentice, came into or resided in this parish by means or licence of the certificate given to her husband? The case I have cited goes a great way to determine this; the child, born after the certificated person came into the parish, was considered within the statute of *W.*, because he was part of his family, and resided as part of the family in the parish; so here the widow had been equally a part of the family of the certificated person, had as such communicated to her her husband's settlement, could be removed with her husband to that settlement, and no where else; and, therefore, her case seems to me, upon principle, not to be distinguishable from the case of her child; if it can, this is remarkable, that the mother can be removed, although the child cannot, and that the apprentice to the child can gain no settlement, although it is argued that the apprentice to the mother can. This case comes directly within the words of the enacting clause of the statute of *Anne*, which are " the apprentice or hired servant to " any person, who did come, or shall reside, in any parish by " means or licence of such certificate." When this woman became the wife of the certificated man, and part of his family, she had a right as such to reside there, and was there, as the child in the case cited was, by means or licence of the certificate. It may be said, that the words of the preamble state the case of persons obtaining and bringing such certificates; the answer is, that the words of the enacting clause very widely extend the case to persons coming or residing in the parish by means or licence of the certificate, for an obvious reason, that it might extend to the apprentices and servants of the children of certificated persons born after the father comes into the parish; that it may extend to the case of an apprentice to a second wife not named in the certificate, who may happen to be living in a parish in *London*, a *feme sole* trader, and other cases of the like sort. It may, likewise, be said, that at the time of the service she is not to be said to be residing by means of the certificate, because her husband was dead: but she is to be considered as much resident there by means of the certificate as the child in the case cited was; she was part of her husband's family, and is neither to be removed

from the other part of it, nor to be distinguished from it. From these statutes the principle and policy of the law is this; to enable men who can get a livelihood in a parish to which they do not belong, and cannot get one in that to which they do belong, to go to the former. The law obliges the former parish to receive a person belonging to the latter and his family, if he bring with him his certificate of the parish to which he belongs; and such person, and all his family, shall reside in the parish to which the certificate is given till they are chargeable; and then, and not before, can they be removed. In return, the law holds out to the parish receiving the person and his family with the certificate an indemnity, that neither he, nor any part of his family that then is, or thereafter shall be, shall bring any burden upon the parish. The widow, at the time of his death, was a part of the family, and so continued till she married again, or deserted the right she had under the certificate. And this is an answer to a question put at the bar, whether, if she had married again, her husband could have been considered as resident under the certificate? Certainly not. After her marriage she takes her husband's settlement; upon a second marriage this is gone, and she has her second husband's, and not her first husband's settlement. And when it is said, that she resided under the husband's certificate only during his life, I say it is otherwise; she is resident as the child was resident; and this has been determined to be as part of his family, and as such under the certificate as well after as before his death. Considering this woman as part of her husband's family, she came into the parish, or was resident there, by means or licence of the certificate: the apprenticeship to her was, therefore, within the words of the 12 *Anne*. It was a burthen brought by such residence in the parish to which the certificate was given, and against which, upon the principle of all the acts, the parish certifying the husband to belong to them ought to indemnify the parish receiving the husband, as a burthen brought upon it by his wife; and, therefore, the rule to set aside the order of Sessions ought to be made absolute.

A certificate granted to a father, mother, and two younger children by name, does not extend to an elder child, who maintained himself in the father's house at the time, and whom the parish did not intend to remove.

745. *Rex* v. *Storrington*, *H. T.* 37 *G.* 3. 7 *T. R.* 133.—In 1778, the pauper's father, *J. C.*, then, and for some years before, having been resident in *S.*, with his wife and three children, viz. the pauper, aged about 14, and two younger children, was removed by order of two justices, with his wife and the said two younger children, to *P.*, from whence he shortly after returned to *S.*, with a certificate from *P.*, regularly executed and allowed, acknowledging him, his wife, and the two younger children, by name, to be inhabitants of *P.*; but the pauper was neither included in the order of removal or in the certificate; the parish-officers of *S.* having declared upon the examination of the father before the magistrates previous to his removal to *P.*, that as the pauper got his own living, they had nothing to do with him. The pauper, at the time of this examination, and for some time before, and also after the father's return with the certificate to *S.* (as above stated), until the time of the yearly hiring and service hereinafter stated, supported himself entirely by his daily labour, and lodged and boarded at his father's house in *S.*, for which he paid his father *5s. per* week. About two years after the father's return to *S.* with the certificate, and while the father continued to reside under it,

the pauper being then about 16 years of age, hired himself for a year to *B.*, of *S.*, whom he had previously served for some time as a day-labourer, and served the year out; after which he again worked for himself as a day-labourer, and lodged and boarded with his father on the same terms as before his service with *B.*, until he married; and from the time of his marriage he continued to reside at *S.*; but not having done any act to gain a settlement, other than as aforesaid, until the 23d of *January* last, when he became actually chargeable, he was removed by the present order, with his wife and family, to *P.*—LORD KENYON C. J. In deciding this case, I wish not to disturb any of the authorities that have been cited; but my opinion, in this case, proceeds on its own particular circumstances. Consider the situation of this family, the father, mother, and two of the younger children, who had been resident at *S.*, were removed by an order of justices to *P.*; but to give them an opportunity of returning to *S.*, the parish-officers of *P.* were applied to for a certificate, which was accordingly given. Now before, and at the time when this certificate was obtained, the pauper had worked as a day-labourer, received his wages for his own use, had lodged in his father's house, and paid a weekly sum for that accommodation. The form of the certificate, too, is material; it was granted to the father, the mother, and the two younger children; but the pauper was not included either in the order of removal or in the certificate, nor was it the meaning of the parties to include him. If, indeed, he were under the disability of gaining a settlement by the 9 & 10 *W.* 3., to be sure this is not one of the modes allowed by that act. But the question is, Whether he is to considered as a certificated person? Generally speaking, if a certificate be granted to the head of a family, it extends to all the members of that family; but it is competent to the parties themselves to narrow the extent of a certificate; and the certificate in question seems to have been especially framed for the purpose of excluding the pauper from the operation of it. It is not conceived in general terms, but, after mentioning the father and mother, it goes on to specify the two younger children, omitting the pauper, who was the eldest: and it is a known maxim, *expressio unius est exclusio alterius.* Therefore, on the particular circumstances of this case, I am of opinion that the pauper was not resident at *S.* under the certificate, and, consequently, was not disabled from gaining a settlement there by hiring and service; but I desire to have it distinctly understood, that I do not by this decision mean to shake the authority of any of the former cases.—GROSE J. The question is, Whether the pauper's residence in *S.* were or were not protected by this certificate? for, if it were not, he is now settled in that parish. A certificate only protects three classes of persons; those who are named in it; those who are part of the family of the certificated person when it is granted; and his children born in the certificated parish after that time. Now, the pauper certainly does not come within either of the first or the third class. Nor was he part of his father's family, as far as respects the certificate; for the certificate does not mention his name, though it does mention the names of the younger children; and the parish-officers declared that he was not included in the former order of removal, which

was the occasion of this certificate, because he was capable of gaining a livelihood for himself. All the parties interested considered the pauper to be *sui juris* when the certificate was granted, and, therefore, it was not meant to include him; he was not a part of his father's family for the purposes of the certificate. — LAWRENCE J. The stat. 9 & 10 *W.* 3. *c.* 11. has restrained those persons, who come into any parish by virtue of a certificate, from gaining a settlement, except in one of the two modes there pointed out; and it meant to restrain those persons whom they could not remove. Then the question is, Could the pauper have been removed from *S.* notwithstanding the certificate, and would the certificate have been conclusive on the parish of *P.* as to him? It certainly would not have concluded them, because it appears that it was intended to exclude him from the certificate at the time when it was granted. Therefore, if it would not have been conclusive on the parish granting the certificate, it seems to follow, that the pauper gained a settlement in *S.* by hiring and service.

A certificate agreeing to receive the person therein stated to be an unmarried woman, and the child of which she was then pregnant, and all other children she might afterwards have, does not extend to a natural child born several years afterwards.

746. *Rex* v. *Mathon*, *T. T.* 37 *G.* 3. 7 *T. R.* 362. — *M. C.*, single woman, being settled at *M.*, and being then pregnant of an illegitimate child, that was afterwards born a bastard, went to *C.* in 1738, under a certificate from *M.*, in which the parish-officers of *M.*, for themselves and their successors, with the consent of the parishioners, engaged to relieve and receive *M. C.*, with the child of which she was then pregnant, and all other children that she might thereafter have, until she or they should acquire a subsequent settlement, whensoever she or any of them should become chargeable to, or ask relief of, their parish. *M. C.* resided in *C.* under that certificate until her death, and in 1746 had the present pauper (*R. C.*), an illegitimate child, who continued to reside in *C.* until the present order of removal, without having done any act to gain a settlement for himself. — LORD KENYON C. J. It is not now necessary to question the propriety of the decision in *Rex* v. *Ipsley*. (*a*) That certainly went much beyond the former cases on this subject. However, that is distinguishable from the present case. That only extended to the child with which the woman was then pregnant; and a child *in ventre sa mere* is capable of being described. But this child was not born until eight years after the certificate was granted; and being illegitimate, he is not included within the general words in the certificate, which extends only to legitimate children.

(*a*) *Ante*, pl. 738.

If a parish certificate be granted to A and to B and C, his children by name, the residence of B *and of his family* in the certificated parish is protected by it, and a son of B (not having been emancipated) cannot gain a settlement in the

747. *Rex* v. *Batheaston*, *H. T.* 40 *G.* 3. 8 *T. R.* 446. — *E. G.* the grandfather of the pauper, being settled at *Batheaston*, went to live in *B.* under a certificate from *Batheaston* dated *October* 21st 1727, certifying the said *E. G.*, *Deborah* his wife, and *E. and T. their children*, to be parishioners of and legally settled in *Batheaston*. *E.* the son named in the certificate, now 80 years of age, continued to live with his father in *B.* until his marriage. He was married there and had issue *H. G.* the pauper. The pauper at the age of 16 was hired to Mrs. *S.* in *B.* as a yearly servant, and lived with her upwards of a twelvemonth. He then worked at day-work in *B.*, then in *C.* parish, sleeping constantly at his father's in *B.*; and afterwards when of age he lived several years with *R. D.* in *B.*, under a yearly hiring at 5*l.* 5*s.* a year and vails; after which service he married his present wife, by whom he had the

certificated parish by hiring and service.

children mentioned in the order of removal. The question for the consideration of the Court is, whether the pauper by such hiring and service gained a settlement in *B.* — THE COURT said, that the distinction was taken in *Rex* v. *Testerton* (*a*) between those cases where the certificate is granted to a person and his family generally and those where the son is mentioned by name in the certificate; that in the former a grandson is not within the protection of the certificate, but that in the latter where the son is named, his family until they are emancipated are within the protection of the certificate, not as the grandchildren of the principal person mentioned in the certificate, but as the family and children of the son, who is also named in the certificate; and therefore they thought that the case of *Rex* v. *Testerton* ought to govern the present case. — PER CURIAM: Order of Sessions confirmed.

(*a*) *Ante*, pl. 743.

A certificate granted by the parish of A to B, acknowledging C and D, *his wife* and their children, to be their parishioners, is conclusive as between the parishes of A and B, though D were not the legal wife of C.

748. *Rex* v. *Ullesthorpe*, *H. T.* 40 *G.* 3. 8 *T. R.* 465. — Two justices removed *T. S.*, *E.* his wife and their two children, from *U.* to *P.*; the Court of Quarter Sessions quashed the order, and stated the following case for the opinion of this Court. *F.*, the mother of the pauper *T. S.*, whose maiden name was *T.*, was married about 40 years ago to one *R.*, whose settlement was at the parish of *H.*, and who enlisted for a soldier a short time after, and was never after seen by the said *F.* his then wife. She hearing that he was dead, about seven years after married *J. S.*, the father of the pauper *T. S*; and about two months after such marriage they applied to the parish of *P.* for a certificate, who granted one to *U.*, acknowledging the said *J. S.*, *M. his wife*, and their family, to be their inhabitants legally settled in that parish. It was proved that the original husband of *M. F.* (*D. R.*) was alive and came home after the said *M. F.*'s marriage with *J. S.* *T. S.* the pauper was born during the cohabitation of the said *M.* and *J. S.*, and after the said certificate, in the parish of *U.* — BEAUCLERK having on a former day obtained a rule *nisi* to quash the order of Sessions, that rule was now made absolute without opposition. — PER CURIAM: Order of Sessions quashed. (*b*)

The settlement of a son, coming into a parish with his father, under a certificate as part of the father's family, not having before gained any settlement of his own, shifts with the settlement of the father in the certificated parish, though such son were

749. *Rex* v. *Leek Wotton*, *T. T.* 52 *G.* 3. 16 *East*, 118. — Removal from *L.* to *M.* — Order quashed, subject, &c. — The pauper's father being resident at *M.* applied to *L.* for, and the parish officers there granted a certificate, by which they acknowledged him, his wife, *J.* (the pauper), and other children by name, to be their inhabitants, and legally settled in their parish of *L.* *J.* was then about 12 years of age, and resided with his father at *M.*, and continued to reside with him there on a tenement of the value of 10*l.* a year, five years after the granting of the certificate, but never gained any settlement in his own right (*c*). — In support of the order of Sessions it was contended, that as the pauper was named in the certificate he could not gain a derivative settlement in the certificated parish from his father; and *R.* v. *Testerton* (*d*), and *R.* v. *Batheaston* (*e*), were cited as in point. — On the

(*b*) *Vide* R. *v.* Tostock, *ante*, pl. 739. R. *v.* Headcorn, *ante*, pl. 734.

(*c*) It was also stated in the case, that the paupers removed were not inhabiting at the time in the parish which procured the order; but the Court said it was a sufficient answer to this objection that it was not made at the Sessions. It was also objected that there was no new taking of a lease of the tenement after the grant of the certificate; but *Le Blanc* J. referred to Rex *v.* Fincern, *ante*, pl. 740.

(*d*) *Ante*, pl. 743. (*e*) *Ante*, pl. 747.

other side the cases of *Rex* v. *Cold Ashton* (*a*), and *R.* v. *Deddington* (*b*), were relied on. — LORD ELLENBOROUGH C. J. When there are conflicting decisions upon the construction of a statute, the Court must refer to that which is and ought to be the source of all such decisions, that is, the words of the statute itself. Some cases have been cited upon this occasion which are certainly of great weight; but which are in contradiction to the prior cases of *Cold Ashton* and *Deddington*; and therefore the Court are obliged to refer to the fountain-head of all, the statute, to see which of them most correspond with the words of it; and upon the best consideration I think that the cases of *Cold Ashton* and *Deddington* range more strictly within the words of the stat. 8 & 9 *W.* 3. *c.* 30. and 9 & 10 *W.* 3. *c.* 11. The second of these statutes recites the former, which empowers the granting of such certificates to provide for the person mentioned in the certificate, with his or her family; and the legislature evidently meant that the certificate should be entire to protect the *pater-familias* and his family, whether named or not; and the naming of any of the family is a mere matter of convenience, in order the more easily to identify them, but it is not directed to be done by the legislature, nor are any powers taken away from or given to such children on account of their being named or not named in the certificate. The stat. 8 & 9 *W.* 3. says, that when any person coming to inhabit and reside in any parish, shall at the same time bring and deliver a certificate to the parish-officers, thereby owning the person or persons mentioned in the certificate to be an inhabitant or inhabitants in the parish certifying; every such certificate shall oblige the parish to provide for *the person* mentioned in the certificate, together *with his or her* family, when chargeable. Now, the person to be named in the certificate is, the *pater-familias*, with his family, if he happen to have any; and then, and not before, it shall be lawful for any *such* person and his or her children, &c. to be removed. I am aware that the word *such* is not in the enacting part of the clause; but I think it must to complete the sense be incorporated there, being in the antecedent part of the statute. The scope and object of the act was to protect the residence of a father or mother coming with their family into another parish, without casting a burthen upon it, or enabling them to gain a settlement there except in the two ways mentioned. There is nothing in the act which requires the nomination of the constituent parts of their family, and it is mere artificial reasoning which makes the distinction between such of the children as are and such as are not named in the certificate; a distinction which the act itself does not make. Then as the child though named, was still to be considered only as a constituent part of the family, it brings it to the question, Whether he was ousted of his derivative settlement from the father? Upon that point I think the language of Lord *Mansfield* is founded in reason, and not opposed by the act, that the children of all parents must have the settlement of the father until they acquire another for themselves. I think, therefore, that the pauper, in this case, continuing part of his father's family at the time, derived the settlement from him, and was not repelled from it by the circumstance of being named in the certificate. — GROSE J. agreed. — LE BLANC J. The Sessions have sent this case for the opinion

named in the certificate.

(*a*) *Ante*, pl. 685.
(*b*) *Ante*, pl. 684.

of the Court upon the question, whether the pauper acquired a derivative settlement from his father? We must, therefore, take it, that the son came into the certificated parish as part of his father's family, never having gained a settlement in his own right; though that is not stated in the case. Then, coming into the parish as part of his father's family under the certificate, with only a derivative settlement from his father; the question is, Whether, while he continued part of his father's family, a settlement gained by the father there will not also be communicated to the son; whether the settlement of the son will not also shift with that of the father? The cases of *Testerton* (*a*) and *Batheaston* (*b*) have not decided that the son coming into a parish and continuing as part of his father's family under a certificate, is not capable of having his derivative settlement shift with his father's settlement; they only decided that a child named in the certificate so far stood in a different situation from that of a child who was not named, as, that the settlement of a son so named, who had ceased to be part of the father's family, should not shift with that of his father. Now here the son had gained no settlement of his own at the time, but was living with his father as part of his family; and the cases of *Cold Ashton* and *Deddington* (*c*) having decided that the settlement of a son so circumstanced, though named in the certificate, shall vary with the subsequent settlement of the father; and that if he come into the parish as part of the father's family with a certificate, his being named in it does not prevent the shifting of his settlement with his father's. This case, therefore, is distinguishable from those of *Testerton* and *Batheaston*. — BAYLEY J. The true construction of the certificate-act seems to be, that a pauper having an independent settlement of his own, and not merely a derivative settlement from the father, shall not, if named in the certificate, gain a settlement in the certificated parish, except in one or other of the ways permitted to the father himself; but if the child come into parish under the certificate of his father, having only a derivative settlement from the father, what is there to prevent his settlement shifting with that of his father, as in other cases? The act does not say it shall not; and the cases say, that though named in the certificate, he shall be treated as part of his father's family, and his settlement shift with his father's. It is said, indeed, that by the words of the act, the settlement of a certificated person can only be acquired in the certificated parish by two modes, and that this is not one of them. But I think the fallacy of the argument is this, that the children do not come into the parish under the certificate *suo jure*, but only as part of the father's family under his protection. The cases of *Cold Ashton* and *Deddington* have decided this point, and if it were not the true construction, this inconvenience would follow; that however young the children might be, coming with their father into the parish with a certificate naming them, if the father gained a new settlement there, he would be settled in one parish, and the children in another. — Order of Sessions quashed.

(*a*) *Ante*, pl. 743.
(*b*) *Ante*, pl. 747.
(*c*) *Ante*, pl. 684, 685.

A pauper may be removed from a parish where he is residing under a certificate to a

750. *Rex* v. *St. Martin at Oak*, *M. T.* 53 *G.* 3. 16 *East*, 303. — Removal from *St. M.* to *D.* — Order quashed, subject, &c. — The pauper having gained a settlement in *F.*, gained a subsequent settlement in *D.* Some years after he had gained such settlement at *D.*, *F.* granted a certificate to *St. M.*, acknowledging the pauper

to be an inhabitant legally settled in *F.*; and the pauper continued to reside in *St. M.* under this certificate, receiving occasional relief from *F.*, until the time of his removal to *D.* The question for the opinion of the Court was, whether the parish of *St. M.*, into which the pauper came by certificate, were not bound to remove him back to the certifying parish, under the 8 & 9 *W.* 3. c. 30. — But THE COURT were clearly of opinion that the act was not restrictive of the power of removal from the parish to which the certificate is granted to any other parish, but only conclusive upon the certifying parish as between that and the parish to which the certificate is granted. This was considered to be the object of the act in *Rex* v. *Lubbenham* (*a*), and in a prior case of *Rex* v. *St. Giles* (*b*), all the authorities agree that it signifies nothing when the certificate was granted; it is only an estoppel upon the parish granting it, as between the two parishes. — Order of Sessions quashed.

parish in which he gained a settlement before the granting of the certificate, and need not of necessity be removed to the certifying parish.

(*a*) *Ante*, pl. 741.
(*b*) *Ante*, pl. 730.

IV. *Continuance and Determination of Certificates.*

751. *Rex* v. *Sudbury*, *H. T.* 28 *G.* 2. 2 *Burr. S. C.* 873. — One *T. B.*, and *B.* his wife, and their children, were certificated from *S.* to *U.* *T. B.* died there. *B.* the widow, and *J. B.* their son, became actually chargeable, and were then removed and sent back from *U.* to *S.* *B.* died at *S.*; but her son, *J. B.*, the present pauper, was bound by indenture, as a parish apprentice from the parish of *S.*, to *E. B.* of *U.*, and served out his apprenticeship there. It was contended that the certificate was still in force, and that, therefore, this pauper had not gained a settlement in *U.* by his apprenticeship there; the statute 9 & 10 *W.* 3. *c.* 4. having declared, that no certificated person shall gain a settlement in the certificated parish, except by renting a tenement of 10*l.* a year, or by serving an annual office in the parish. — RYDER C. J. The question is, Whether he is to be considered as a certificate-man now? and we are all of opinion, that the removal of *J. B.* from *U.* to *S.*, restored him as fully as if there had been no certificate at all; the certificate was, if I may say so, *functus officio*, after this order of removal back again to the parish which gave it. It can have its effect but once; and, therefore, after this order of removal back again, it can have no further effect. The intention of the certificate is to secure the parish which receives such certificate-persons from being obliged to support them and their family, in case they should become chargeable. Now this event did fall out; and they were accordingly removed back again.

A certificate is discharged by a removal of the pauper to the parish by which the certificate was given.

752. *Rex* v. *Taunton*, *St. Mary Magdalen*, *T. T.* 29 & 30 *G.* 2. *Burr. S. C.* 402. — *R. B.*, the grandfather of the pauper, came from *T. St. J.* to *T. St. M.* with a certificate duly executed and allowed. He afterwards went back into the parish of *T. St. J.*, and there had *R.* his son, the father of the present pauper. *R.*, the pauper's father, afterwards married in *T. St. J.*, and went and lived with his wife and family in a house there, apart from his father, and had issue therein *R.*, the pauper. *R.*, the grandfather, died in *T. St. J.* Afterwards *R.*, the father, died: *R.*, the pauper, was then bound out an apprentice, by the parish of *T. St. J.*, into the parish of *T. St. M.*, and there served his apprenticeship. — DENNISON J., delivered the resolution of the Court: We hold,

A certificate may be discharged by the pauper's returning to the certifying parish, and there remaining for such a length of time as to show that he meant to waive and desert the certificate. Cald. 98. 145.

that the certificate was of no force at the time of the grandson's being put apprentice in *T. St. M.*, but was then totally at an end. For in so long a course of time as this is, and after such a desertion, we will conclude that there was an end of it; and it ought to have been given up (*a*) to the parish of *St. J.* It was, at the time when the order in question was made, and under the circumstances of this case, of no more effect than if it had never been given. It was absolutely waived and deserted; and the father and grandfather of this pauper could not have gone to *St. M.* again without a new certificate; the old one being totally at an end. It is a good deal like the case of *Uttoxeter* (*b*), where the certificate was considered as *functus officio*, and as if it had never at all existed; being, in that case, totally at an end, as being satisfied, and having had its full and whole effect, by the removal of the paupers, under an order of justices, to the parish who had given the certificate. Therefore, without entering into a discussion of the extent of the certificate, or how many descents the word "family" shall include; or drawing the line minutely and exactly, what shall, or shall not be esteemed an emancipation of a son from his father's family; it suffices here, that we go upon the particular circumstances of this case, that after so great a length of time, and such a desertion of it, this certificate shall be looked upon to be at an end, and as if it had never been given: and if so, then the apprenticeship of *R. B.*, the pauper, will have just the same effect as if no such certificate had ever been given at all, or were any ingredient at all in the case; that is to say, that the apprentice is settled in *St. M.*

(*a*) See the case of Rex *v.* Bishopside, *ante*, pl. 736.

(*b*) Rex *v.* Sudbury, *ante*, pl. 751.

R. *v.* Darlington, *ante*, pl. 742.

A certificate is avoided by a master and his apprentice removing into another parish.

753. *Rex* v. *Spotland*, *H. T.* 5 *G.* 3. *Burr. S. C.* 527. — *H.*, when a boy about 14 years of age, was legally bound an apprentice by his father, to one *O.* of *C.*, a certificated person from *M.* to *C.*; and served his master in *C.* for some years. Then the apprentice removed with his master into *S.*, where he served him for 40 days and upwards, and then was married to a young woman, whose parents lived in *C.*; and till the expiration of the apprenticeship which was upwards of half a year, the apprentice, as such, daily worked with his master in *S.*, but went and lodged with his wife, at her parent's house at *C.* It was contended, that the removal of the master and his apprentice from *C.* to *S.* being voluntary, and not by an order of two justices, the certificate was not thereby deserted, but was still in force, and that therefore the pauper had gained no settlement under the apprenticeship. — But the Court held, that although the certificate still subsisted, yet that he had gained a settlement in *S.*, for that the 12 *Ann. c.* 18. § 2., only says, that an apprentice shall not gain a settlement in the parish to which his master was certificated: and the order removing him from *C.* to *F.* was affirmed.

A certificated person having returned to the certifying parish, and remained there 18 years, a son who was born to him there, during that time, being

754. *Rex* v. *Frampton-upon-Severn*, *T. T.* 20 *G.* 3. *Dougl.* 417. — In the year 1751, the parish of *T.* granted a certificate to the parish of *F.*, acknowledging *J. M.*, and *Ann* his wife, to be settled in *T.* Under this certificate they lived in *F.* till the latter end of 1753, or the beginning of 1754, when they voluntarily returned to *T.*, and had afterwards a son, named *S.*, born there. *J. M.*, the father, continued to live in *T.* for 17 or 18 years; when, on the death of a relation in *F.*, he went there by himself (his wife being dead) to possess himself of the effects, and remained there about

six months; when being taken ill, he was, by the parish of *T.*, recommended to *G.* infirmary, and there died. Before he went to *F.*, to take possession of his relation's effects, *S.*, the son, was hired for a year to *R. V.*, in *F.*, and lived with him two or three years. On going out of *V.*'s service, he was hired again in *F.* to *C.*, and lived with him for two or three years, and till after his father died. The son afterwards married, and had a child, and his wife and child were the paupers who were removed by the two justices from *F.* to *T.* — LORD MANSFIELD: The exact circumstances of this case have not occurred before, though the principle of desertion, by long disuse, is to be found in that of *Taunton*. But here there was no faith given by the parish of *F.* to the certificate, as to *S.*, whom they never heard of till he came there as an emancipated person. The case seems to me much stronger than that of *Taunton*.—WILLES and ASHHURST Js. of the same opinion.—BULLER J. I am of the same opinion. There are no reasons stated for the judgment in *Rex* v. *Spotland* (*a*), and it does not appear, either that the Court meant to contradict, or that the decision did contradict the case of *Rex* v. *Taunton*. (*b*)

hired and serving a year in the parish certified to, gains a settlement by such hiring and service.

(*a*) *Ante*, pl. 753.

(*b*) *Ante*, pl. 752.

755. *Rex* v. *Keel* (*c*), *H. T.* 22 *G.* 3. *Cald.* 144. — *Peak*, the pauper, was born in the parish of *B.*, where her father and mother resided under a regular certificate from the parish of *K.*: Some few years after she was born, her father and mother died at *B.*, where she remained after their death, till she was about seven years of age, with her brother, who was named in the certificate; and then voluntarily went to the parish of *K.*, where she remained till she was 14 years of age; during which time she was maintained by the parish of *K.* She then hired herself for a year, and served the year, and two or three years in the parish of *K.*; at the expiration of which last service she returned *voluntarily* to the parish of *B.* to her brother's house; and was afterwards hired to one *P.* of *B.* for a year, and served him such year in *B.*, and was then hired for and served another year with *H.* in *B.* — LORD MANSFIELD. The question is, Whether the pauper returned to the certificated parish under the faith of the certificate? And to this point the reasoning in the case in *F.* is material. It strikes me that she returned independently and as *sui juris*, rather than to her old home and parish, and under the certificate.—WILLES J. It is the misfortune of these cases, that each must stand upon its own circumstances. The inquiry here must be, Whether the certificate was *functus officio*? — The fact is, that the pauper returns, and returns *voluntarily*, to the house in which she had before resided under the certificate, which ever since had belonged, and which then belonged to her brother, who was at that time resident there under the certificate. It certainly was not discharged as to him; and there do not appear to me to be circumstances in the case sufficient to warrant us in saying, that it was so with respect to the pauper. — LORD MANSFIELD: I am satisfied. The voluntary return to the house of her brother, who was then resident under the certificate, had escaped me.—ASHHURST J. concurred.

A pauper *voluntarily leaving* the parish to which she was certificated, and after an absence of seven years *voluntarily returning* to the same house, in the parish certificated to, and to a branch of the same family with whom she had before lived under the certificate, does not thereby *vacate* her certificate. R. v. Ingworth, *post*, pl. 764.

See Lord *Kenyon*'s observation on R. v. Heath, *post*, pl. 762.

756. *Rex* v. *Findern*, *E. T.* 24 *G.* 3. EDITOR'S *MSS.* — The pauper, being settled at *F.*, at *Lady-day* 1782, took two acres, two roods, and two perches of land there, for a year, at the rent of 1*l.* an acre; and at *Old May-day* following took a tenement at

A certificate granted to a person during a time that he was irremovable.

(*c*) See Rex v. Bleasby, *ante*, pl. 81. Rex v. Morley, *post*, pl. 769.

from the certificated parish, is discharged by his inchoate settlement being completed.
S. C. Cald. 426.

M., at the yearly rent of 7*l.* 10*s.*, amounting together to upwards of 10*l.* a year. On the 14th of *May* he went to reside on the tenement at *M.*; and on the 14th of *June* following the churchwardens and overseers of *F.*, at the request of the pauper, granted him a certificate, acknowledging him, his wife, and children, to be legally settled in *F.*, which certificate was duly allowed by two justices, and delivered to the parish-officers of *M.* The pauper continued to occupy all the premises until the *Michaelmas* following, but there was no fresh taking after the granting of the certificate. The pauper was removed to *F.*, and, on appeal, the Sessions confirmed the order, stating the above case. — Mr. BEARCROFT said, the pauper had come to *M.* under a certificate, and that certificate could be got rid of only by a subsequent act, which act must be *a taking* of 10*l.* a year. In this case it was sufficient to say, that there was no *taking* subsequent to the certificate. The statute 9 & 10 *W.* 3. *c.* 11. is express, that the certificated person must *take* a lease of 10*l.* a year, which is the more remarkable, as the statute 13 & 14 *Car.* 2. *c.* 12. which authorizes the removal of persons from tenements under 10*l.* a year, uses the words "coming to settle;" so that greater strictness was intended in the case of persons living under certificates. Besides, the principle of the statute was the ability to take a farm of such a value, and the ability must necessarily relate to the time of the contract: a taking 10 years before would be no proof of ability now; and it was impossible to draw any line, if the words of the statute were departed from. As to the authority of a certificate, they cited the case of *Honiton* v. *St. Mary Axe* (*a*) to show that it was conclusive against the certifying parish as to all the world. (*b*) It was possible that in this case the pauper did not want a certificate; but that was no more than conjecture, for the renting might be fraudulent, and the certificate prevented the parish of *M.* from making the inquiry. But whether true or false, the certificate was conclusive, and not to be disputed by *F.* There are several cases where a woman certificated as a wife was proved not to be so: but the Court held, that the parish was estopped, and should have inquired before they granted the certificate. (*c*) As to any hardships in this particular case, they said, it was of much more consequence that general rules should be adhered to. — Mr. BOWER, *contrà*, said, it was not true that the pauper came into the parish of *M.* under a certificate. He was already there, residing upon his own estate, and irremovable. He had an inchoate right to a settlement, which he might perfect by residence. The certificate was true at the time it was granted, for the pauper was then settled at *F.*; but as soon as he completed his residence of 40 days, he became settled at *M.* There could be no doubt but on a fair construction of the statute his "continuing to hold," was, in this case, equivalent to "taking."— THE COURT took time to consider of this case; and some days after, *Willes* J. delivered their opinion as follows: The pauper in this case had no occasion for a certificate. He was irremovable, but had not yet gained a settlement. It is not stated, that the parish knew he had no occasion for a certificate. The statute does not say that the taking should be before or after. The principle it goes on is ability to take, which this pauper certainly had. We are all of opinion, that he gained a settlement at *M.* notwithstanding the certificate. — Order quashed.

(*a*) *Ante*, pl. 741. n.

(*b*) But see the case of All Saints v. St. Giles, *ante*, pl. 730., where it is determined that a certificate concludes the parish giving it only against the parish to which it is given.

(*c*) Rex *v.* White Waltham, *ante*, pl. 731. and Rex *v.* Headcorn, *ante*, pl. 734.

757. *Rex* v. *Birdham*, *H. T.* 25 *G.* 3. EDITOR's *MSS.* — *G. E.* and his wife were removed from *W.* to *B.*, and the Sessions confirmed the order, and stated the following case: *J. E.*, father of the pauper, about 30 years ago went by certificate from *B.* to *W.*, and under this certificate the pauper was born in *W.* After residing two or three years in *W.*, the father voluntarily removed with his family to *A.*, where, (under a fresh certificate from *B.*) he resided about five years. He then voluntarily removed with his family to *St. A.* in *C.*, and resided there (under a fresh certificate from *B.*) about 10 years. From thence he voluntarily removed with his family to the parish of *A. S.*, otherwise *P.*, in the same city, and there lived about six months (under another certificate from *B.*); when falling into distress, and applying for relief, the parish-officers obtained an order of two justices for the city for the removal of *J. E.* the father, his wife, and five children, from *A. S.* to *B.* (the said *J. E.* then having only five children); but *G.*, the pauper, being then employed by one *M.* to look after horses as a stable-boy in *St. A.* aforesaid, the adjoining parish to *A. S.*, he was not removed with his father; but about two or three days after he went to his father at *B.*, and lived with him about six months as part of his family. Being then 16 years of age, he put himself apprentice, by indentures legally executed and stamped, to *N.*, of *W.*, cordwainer, for three years, the greater part of which time, and particularly the two last months thereof, he served with his master in *W.* — MINGAY, in support of the orders, contended, that the original certificate from *B.* to *W.* was still in force as to the father and all his family, or, at least, as to this son the pauper: it must be shown on the other side, either that the certificate was deserted, or that it was discharged. The case of *Rex* v. *Taunton St. Mary* (*a*), which was the leading case as to the desertion of a certificate, went on many particular circumstances which do not occur here. The time in this case is much less, and the father never returned at all to *B.*, after the granting of the certificate to *W.*, until he was removed from *A. S.* A certificate removed upon is certainly at an end, but there is no case which says the granting of a fresh certificate to a different parish shall be a discharge of the old certificate. There is no reason why 20 certificates to different parishes should not subsist at the same time: for, What is a certificate but an acknowledgment? As to the removal from *A. S.*, the pauper was not the object of that order; he was not removed by it, nor could he, for he was not actually chargeable. There was no express decision, that the certificate was not discharged as to him by the removal of the father; but ASTON J. in the case of *Rex* v. *Framlingham* (*b*), inclined to think that it was discharged only as to those persons of the family who asked relief, and that it remained in force as to the rest. — Mr. BEARCROFT, *contrà*: Here is the strongest evidence of desertion; for, besides the length of time, 30 years, there are several removals in fact, followed by a removal in law. 2dly, A new certificate discharges the old certificate. There is, indeed, no express decision on the point, but a certificate is an acknowledgment to a particular parish, and when a new one is granted the old one is gone, because no longer necessary. But, 3dly, The order of removal from *A. S.* is decisive, if the other points were doubtful. An order of removal from the same place discharges a certificate;

A certificate is discharged by an order of removal from a third parish to the certifying parish; and a fresh certificate granted to another parish discharges the old certificate. S. C. Cald. 500. See R. v. St. Peter's Derby, *post*, pl. 758.

(*a*) *Ante*, pl. 752.

(*b*) *Ante*, pl. 690.

(a) *Ante*, pl. 751.

it is *functus officio*; that is decided in the case of *Rex* v. *Sudbury* (a), and is admitted by Mr. *Mingay*. A removal from a third place has the same effect, because any order of removal renders the certificate unnecessary, there being then an adjudication on record concerning the settlement at a time subsequent to the certificate. The pauper is expressly included in this order, and removed by it; for it is for all the five children, and his going a few days after the rest makes no difference; but if he were not named in it, the removal of the father would discharge the certificate as to him. He is not named in the certificate, being born after it was granted. He is included, by operation of law, as part of his father's family; he goes to *A. S.* as part of his family; and returns as part of it to *B.* — LORD MANSFIELD: I think the original certificate granted 30 years ago was discharged by the subsequent certificate; and if not, it was certainly discharged by the order of removal. — Orders quashed.

A second certificate to a pauper discharges a former one given by the same parish.

758. *Rex* v. *St. Peter, in Derby*, *E. T.* 26 *G.* 3. 1 *T. R.* 218. — The pauper, on the 5th of *November* 1751, was bound apprentice for seven years to *P.*, in the parish of *A. S.*, to which place *P.* had a certificate from the parish of *S.* The pauper served his master in *A. S.* about five years and a half; and the master, with his family, at *Lady-day* 1757 removed to *C.*, where he resided till the 14th of *January* 1758, when *S.* granted *P.* a certificate. Between *Lady-day* 1757 and the 14th of *January* 1758, the pauper served his master upwards of 40 years in *C.* *P.* the master, never returned to *A. S.*, but continued at *C.* under the certificate. The pauper returned to *A. S.* in the summer 1758, and served his master there upwards of 40 days after *S.* had granted the certificate to *C.* The only question was, Whether the second certificate to *C.* discharged the former one to *A. S.*, they having both been given by the parish of *S.*? THE COURT, being of opinion that this question was determined by the case of *Rex* v. *Birdham* (b), discharged the rule, without hearing any argument.

(b) *Ante*, pl. 757.

A certificate continues until the parish granting it, show clearly some matter in discharge thereof; for the Court will not presume such discharge from other facts.

759. *Rex* v. *Warblington*, *E. T.* 26 *G.* 3. 1 *T. R.* 241. — *W. B.*, father of the pauper *J. B.*, about the year 1736 came into the parish of *H.* with a certificate from the parish of *W.*, acknowledging him and his family to be settled in the said parish. On the 20th of *October* 1748, *J. M.*, the lord of the manor of *H.*, granted to the said *W. B.*, and his heirs, one parcel of the waste ground called the *G. P.*, parcel of the manor and in the parish of *H.*, and he built a house thereon, and lived therein for several years afterwards as the owner thereof; but it did not appear to the Sessions whether this was a *voluntary grant* on the part of Mr. *M.*, or a *pecuniary purchase* on the part of *B.* — THE COURT: The parish who grants must get rid of a certificate; if that can be done only by *presumption* it must stand good, for then the Court cannot presume one way or the other; whoever wants to set aside that which ever existed, must show something which destroys it; and the appellants, not having satisfied the Sessions that this was *a voluntary gift*, cannot now impeach the order of removal.

If a pauper quit the parish to which the certificate is granted, without any intention of

760. *Rex* v. *Newington*, *T. T.* 26 *G.* 3. 1 *T. R.* 354. — The father of the pauper resided at *N.* about four years, under a certificate from *M.*, bearing date the 2d day of *June* 1748, during which time the pauper was born. The father then moved with his whole family to the hundred of *H.*, distant about nine miles from *N.*, and

staid there for two years; and from thence also moved with his whole family to *S.*, distant eight miles from *N.*, where he continued about four years, when he died there. About two years after the father's death, his mother went to *N.*, to keep her uncle's house, with whom she continued till his death. She afterwards lived at *N.*, till she herself died, and was relieved by *N.*, having, after her husband's death, got a settlement there. The pauper, within a year after the father's death, went to *N.*, and there hired himself (being unmarried) as a servant to one *A.*, of the said parish of *N.*, for a year, and lived with him in *N.* the whole of the year under the hiring, and, at the expiration thereof, continued with his master for another year, in the said parish, as a yearly servant; and, at the expiration of his service with *A.*, hired himself to one *S.*, minister of *N.*, for a year, as a servant, and continued in his service two years, and never gained a settlement elsewhere. — LORD MANSFIELD C. J. It is admitted, that there may exist a case in which a certificate shall be considered as *functus officio*. Then the Court ought to draw a line, in doing which it will be material to consider what is the nature of a certificate. It seems to me, that *a certificate* by the parish from which the pauper goes to another, *is an indemnity to that other parish from the consequences of permitting him to reside there;* there it has done its office the moment that residence is permanently at an end. A temporary absence for a particular purpose will not discharge it; but when the pauper has left the certificated parish for years, and neither party has had any reliance upon the certificate, then it has done its duty, and has no longer any operation. In the present case the pauper had left the certificated parish for six years, without any intention of returning, by which it is manifest that the certificate was discharged. — WILLES J. The true question is, Whether the pauper came into the parish of *N. under the faith of the certificate?* The father had removed with his whole family to *H.*, and afterwards to another parish, where he died, without having returned to *N.* In some respects this is a stronger case than that of *Rex* v. *Frampton* (*a*); for in that case the father did return to the certificated parish; here he did not. Again, in that case the hiring and service of the son were in the life-time of the father; here the pauper was not hired in *N.* till after the father's death; and at the time he so hired himself the mother resided elsewhere, and all the parties seem to have considered the certificate as at an end. When there is a decided case to support us, minute circumstances should not induce us to make any alteration in the law. It is said, that this case differs from that of *F.*, because the pauper was born in the parish; but, taking all the circumstances together, that makes no difference, for none of the family thought of the certificate; the father had left the parish and was dead, and the mother was living elsewhere, at the time that the pauper returned to *N.*: and it is clear to me, that he returned without any consideration about the certificate. This case is different from that of *Rex* v. *Keel* (*b*); there the pauper's brother remained in the certificated parish, and the pauper returned to his house, under the faith of the original certificate, and not with a view to a hiring and service, as in the present case; for here the pauper came into the parish of *N.* as a new man, the certificate having been before abandoned. — ASHHURST J. The rule now

returning, the certificate is at an end.

Rex v. Ingworth, *post*, pl. 764.

(*a*) *Ante*, pl. 754.

(*b*) *Ante*, pl. 755.

laid down is safe and proper, and is likely to be attended with fewer inconveniences than any other. It is extremely desirable, for the sake of the public, that some certain rule should be established, which I think should be this: As the intention of a certificate is only to indemnify the parish to which it is given during the residence of the pauper, *whenever he leaves the certificated parish without any intention of returning, the certificate should be taken to be at an end;* any other rule would be attended with great inconvenience. No precise line can be drawn with respect to length of time: but where a pauper has once quitted the parish to which a certificate was granted, and returns to it again, it is competent to that parish to require a fresh indemnity.—BULLER J. In all questions relative to settlements, it is desirable that some broad plain ground should be established; and in these cases one of two rules must hold; either that when a certificate is granted, the pauper shall never, during his whole life, gain a settlement in the certificated parish; or, that he shall discharge the certificate by quitting the parish to which such certificate is granted. If this had been a new question, the first would have been the best rule, because it accords more strictly with the letter of the act of parliament; and my idea is, that we cannot keep too close to the statute. But that rule cannot be adhered to without overturning a multiplicity of cases; for it has been decided in many instances, that a certificate may be abandoned. In *Rex* v. *Taunton* (*a*), the Court said, that neither the father or the grandfather could have gone back to the certificated parish without a new certificate. If that went on any principle it was this, That the grandfather of the pauper, by leaving the parish to which he was certificated, and going into another without any intention of returning, discharged the certificate. Some of the cases hold, that if a certificated person gain a settlement in a third parish, he may afterwards gain one in the parish to which he was certificated. The fact of the pauper's leaving the parish is known to the parish-officers, but they cannot know what the pauper does after he has left the parish. Then it is just the same as to the parish receiving the certificated man, whether in the intermediate time he has done any act to get rid of the certificate or not; therefore, in all cases, whenever a pauper returns to the parish again, they should require from him a new certificate and a new indemnity. And I hope this case will put this part of the law at least out of dispute for the future.

(*a*) *Ante*, pl. 752.

A certificate is discharged by the certificated man leaving the certificated parish with all his family, and taking up his residence in another parish, and does not revive upon his return thereto after an absence of two years.

761. *Rex* v. *St. Michael's, in Coventry, H. T.* 34 *G.* 3. 5 *T. R.* 526. — In 1754 the pauper's father, *W. C.*, with his family, came to reside in the parish of *St. M.*, under a certificate from the parish of *St. S.*, and resided there till 1757. He then quitted the parish of *St. M.*, and went with his family into the said parish of *St. S.*, and took a house, where he resided for two years and upwards, during which time the pauper was born. Then *W. C.* the father, with his family, returned again to *St. M.*, and staid there till the latter end of the year 1767; and then went back with his family to *St. S.*, took lodgings in that parish, and polled at the general election for *N.* He afterwards removed to another house in the said parish, where he continued till 1770. The pauper's father and his family then returned to *St. M.*, and staid there till 1776. During the last residence in *St. M.*, the pauper was bound an apprentice to his father. Soon after 1776, the

pauper's father took the pauper with him, and went back to *N.*, and was followed in a few weeks by his wife, who sent his goods after him to the parish of *A. S.* in *N.*, where they lived six months, and worked as a weaver, and the pauper resided with them. The pauper's father then removed with his family into the parish of *St. P.* in *N.*, and the pauper resided in that parish more than 40 days. The pauper's father with his family left *N.* in 1777, and sold his looms there, and went back to *St. M.*; and the pauper afterwards resided with his father under the indentures of apprenticeship upwards of one year in *St. M.* The Court of Sessions were unanimously of opinion, that the settlement of the pauper is in the parish of *St. M.*—LORD KENYON C. J. The concluding part of the case, "that the Court of Sessions were unanimously "of opinion that the settlement of the pauper is in the parish of "*St. M.*" is worth observation; because, I think this inference is to be drawn from it, that the justices found the law upon this subject so perfectly settled in the case of *Rex* v. *Newington* (*a*), that they thought it ought not to be disturbed; and I perfectly agree with them. In the cases that first arose upon the question of vacating certificates the Court did not lay down any clear principles applicable to all cases. At first it was supposed that the party must be removed from the certificated parish, in order to put an end to the certificate; but it was at length settled in *Rex* v. *Newington*, that a voluntary removal from the certificated parish, not, indeed, for a temporary purpose only, but where (as Lord *Mansfield* said) "the residence there is perma-"nently at an end," will put an end to the certificate. A mere temporary removal I understand to be where the person goes from the certificated parish to make a visit elsewhere, or on occasional business, leaving his family behind him in that parish, as being the place of his domicile. But in this case the pauper's father went, taking all his family with him, to the certificating parish, where he took a house and resided for two years; he afterwards went back to the certificated parish, and again returned to the parish by which the certificate was granted, where he continued three years more, making the last parish the place of his permanent residence. On the ground, therefore, that he left the parish of *St. M.*, not for a temporary purpose only, but with a view of making the certificating parish the place of his permanent residence, and not being able to distinguish this case from that of *Rex* v. *Newington*, which I wish to adopt to its fullest extent, I am of opinion that this rule for quashing the order of Sessions ought to be discharged. In this case, indeed, there is another ground on which the original order is bad; for the pauper gained a settlement in a third parish, that of *All Saints* and *Northampton*, by serving there more than 40 days under the indentures of apprenticeship. However, I do not proceed merely on this particular ground, but on the broad general ground established in the *Newington* case, namely, that the certificate granted to the pauper's father was discharged by his leaving the parish to which the certificate was given.—ASHHURST J. The case of *Rex* v. *Newington* seems decisive of the present. The principle there laid down was, that when the party leaves the certificated parish, without any intention at the time of returning to it, the certificate is at an end. Now here, when the pauper's father first left the parish to which

(*a*) *Ante*, pl. 760.

the certificate was granted, he went into the parish which had granted the certificate, where he resided with his family for two years. He was then domiciled in that parish. And when he went a second time to *St. M.*'s, that parish should have required a fresh certificate. — BULLER and GROSE J. of the same opinion.

A certificate may be discharged as to any of the persons mentioned in it, as if the son of a certificated person marries, and lives in a house of his own.

762. *Rex* v. *Heath* (*a*), *E. T.* 34 *G.* 3. 5 *T. R.* 583. — *J. S.* the grandfather of the pauper, being a settled inhabitant of *H.* came into the parish of *M.* under a certificate dated 4th of *October* 1743. *J. S.* resided under this certificate at *M.* to the time of his death, which happened about 16 or 17 years ago. About two years and a half after the certificate was granted, he had a son born, namely, *R. S.*, the father of the pauper. *R.* continued to reside with his father at *M.* until he (*R.*) attained the age of 24 years, when he married, lived in a separate house at *M.*, and had a child (the pauper), and has lived separate from his father to the present time. *R. S.* also occupied with his house for three or four years a close of land in *M.*, both together being under the value of 10*l.*: for which he from the time of his marriage as above stated (except for the last three or four years) has been rated to and has paid the poor assessments within *M.* He was rated, and paid the aforesaid assessments, both before and after the death of his father. *M. S.*, the pauper, is the daughter of *R. S.* The Court of Sessions were of opinion that the certificate was not discharged as to *R. S.* — LORD KENYON C. J. It ought not to be supposed that we can entertain the least doubt on this point so recently after the decision in the case of the *King* v. *Darlington*, within which determination this case falls. And I wish it to be understood that I adopt that case to its full extent. With regard to the case of *Rex* v. *Keel* (*b*), it seems to me that Lord *Mansfield*'s first thoughts on it were best: he afterwards, indeed, gave way to what was suggested, but it was generally thought that he did so without sufficient ground. However, I hope that the rule established in *Rex* v. *Darlington* (*c*) will be the guide in future, because it is so plain that it cannot be misunderstood. — BULLER J. It is said by the counsel, who have argued in support of the order of Sessions, that the words of the act of parliament have described the line by which we must be guided in our decision. The act 8 & 9 *W.* 3. *c.* 30. speaks of the certificated man and his family. Then, what is meant by the word "family?" In the case of *Rex* v. *Darlington* it was decided that "family" only included those who lived under the father's roof. And that was not then determined for the first time; for in *Rex* v. *Bugden* (*d*), which happened in *Hil.* 21 *G.* 2., it was held that a son, who was married, and living in a house of his own, could not be considered as part of his father's family, but was become the head of his own family, which was to be considered as an independent one. This case, therefore, appears so clear on the authorities, and on the plain and obvious meaning of the words of the statute, that I cannot entertain the least doubt on it. — GROSE J. The argument today has proceeded in part on a supposition that the determination in the case of *Rex* v. *Hampton* (*e*) broke in upon that of *Rex* v. *Darlington*; but that was by no means the case. In the latter it was held that the grandchildren of the certificated person were not a part of his family within the meaning of the act of parliament; and

(*b*) *Ante*, pl. 755.

(*c*) *Ante*, pl. 742.

(*d*) *Ante*, pl. 60.

(*e*) *Ante*, pl. 744.

(*a*) See Rex v. Morley, *post*, pl. 769.

in the former, that the widow of the certificated man was part of his family. But the decision of the one does not interfere with that of the other. It has been contended in this case that a son, who has left his father's house, is married, has a family of his own, and is himself the head of a new family, nevertheless continues to be part of his father's family: but according to the case of *Rex* v. *Darlington*, I say, that he ceased to be part of his father's family when he married and lived separate from his father. I am, therefore, clearly of opinion that a settlement was gained in *M.* by the son, who no longer continued part of his father's family, but was then become the head of a new family.

A certificate to one of several consolidated parishes is discharged by the certificated person being hired and serving for a year in another of the parishes.

763. *Rex* v. *Wymondham*, *H. T.* 36 *G.* 3. 6 *T. R.* 552. — On the 10th of *December* 1785 a certificate signed by two churchwardens and four overseers, describing themselves as the churchwardens and overseers of the parish of *W.*, was sent to the parish of *St. S.*, acknowledging *D. D.*, his wife, and three children, of whom the pauper was one, to be inhabitants legally settled in *W.*, and undertaking to receive them whenever they should become chargeable to *St. S.*'s, or to any other parish in *N. W. D.*, the pauper, hired himself to *J. M.*, of *L.*, from *Lady-day* 1788, for a year, at the wages of 2*l.* 10*s.*, and served him during that and the two following years. The parish of *L.* is one of the parishes within the liberties of the city of *N.* (*a*) Prior to the year 1776, the year in which the parish of *W.* was incorporated with other parishes in the hundred of *F.*, in the county of *N.*, for the maintenance of the poor by act of parliament (*b*), it had been usual in the parish of *W.* to appoint four churchwardens and eight overseers of the poor every year. The parish of *W.* consists of several divisions. One general rate is made for the whole parish, which is collected separately in each division, and the money so collected has been paid into the hands of a treasurer, who acts for the parish at large. The poor persons of each division are relieved out of this general fund; and no order of removal has ever been made from one division of the parish of *W.* to another division of the same parish. — And THE COURT held the certificate was discharged by the hiring and service.

If the son of a certificated person serve a year under a yearly contract, in the parish granting the certificate, and then return, under age, to the father's house for a short time, and then serve another year with another master, under a yearly hiring, in the

764. *Rex* v. *Ingworth* (*c*), *M. T.* 40 *G.* 3. 8 *T. R.* 339. — In the year 1781, *S. S.*, the father of *S. S.* the pauper, went with his wife and *S. S.* the pauper, as part of his family, to reside in the parish of *I.*, under a certificate from the parish of *E.* In the year 1787 the pauper, then of the age of 16, let himself to *J. B.*, of *E.*, and served two years as a yearly servant. He then let himself to *W. C.*, of *E.*, and served him as a yearly servant for a year. He afterwards let himself from three days after *Michaelmas* 1790 to the *Michaelmas* following to *K.*, of *B.*, farmer, and completed his service. At the expiration of the year he returned to *I.*, where his father still resided under the certificate, and lived in his said father's house about a month, during which time he worked as a day-labourer at *B.*, and paid his father for his board. When he returned to *I.* he did not consider himself as going with a view to

(*a*) By stat. 10 Ann. c. 6. the parishes in Norwich are incorporated for the purpose of erecting a workhouse and maintaining the poor out of one joint fund.

(*b*) Stat. 16 G. 3. c. 9.

(*c*) See Rex *v.* Morley, *post*, pl. 769.

certificated parish, he does not gain a settlement in the latter parish. See Lord *Ellenborough*'s observations on this case in R. v. Morley, *post*, pl. 769.

the certificate. At the expiration of the month he det himself for a year to *N.* of *I.*, and lived in his service two years. — LORD KENYON C. J. Although the decisions in some of the cases on settlements are very nice, whenever we find a case precisely similar to the case in question we ought to be governed by it. Now it appears to me that the case of *Rex* v. *Keel* (*a*) is exactly like the present. There, indeed, Lord *Mansfield* at first doubted whether or not the pauper returned to the certificated parish under the certificate, but afterwards he was of opinion that the pauper had returned under the faith of the certificate. If the pauper in this case had gained a settlement in a third parish, the reasoning in support of this order would have applied; but here is no ground for presuming, as in *Rex* v. *Newington*, that the parties had abandoned this certificate, for the pauper's father was resident at *I.* under the certificate when the son returned to him. — LE BLANC J. mentioned the case of *Rex* v. *Collingbourn Ducis*, the principle of which, he said, applied to the present case. — PER CURIAM: Order of Sessions quashed.

(*a*) *Ante*, pl. 755.

A person cannot gain a settlement by hiring and service with the son of a certificated man continuing to reside in the certificated parish with his mother, after the father's death, as part of her family, though the son were of age, and carrying on business for himself; such circumstances not amounting to an emancipation.

765. *Rex* v. *Sowerby*, *E. T.* 42 *G.* 3. 2 *East*, 276. — *Richard S.* in 1745 went with a certificate, in which he only was named, from *D.* to *S.*; and during his residence there under that certificate, his son *Ralph S.* was born. *Richard S.* died; after whose death *Ralph* his son, being arrived at manhood, followed the business of a twine-spinner at *S.* for many years; and about 1780, which was 10 years after the death of his father, he engaged the pauper *M.* as his servant in the above business; and the pauper continued in such service at *S.* for 11 years, during which period he was, whilst unmarried, hired to and served him for a year. *Ralph S.* also, during these years, hired a boy to turn the wheel necessary in twine-spinning. When the pauper was hired for and served a year as above mentioned, *Ralph S.* was a bachelor, and lived in a house at *S.* with his mother, which she went to and rented after her husband's death, at about 2*l.* 10*s.* a year; and he never left this house or his mother, except for a few weeks in harvest-time, in one year. The mother had no concern in the twine-spinning business; and the pauper and the boy were the servants of *Ralph S.*, and not of his mother. — This case was first argued in the last term, when the Court, after hearing the counsel in support of the orders, directed them to be quashed, being clearly of opinion that *Ralph S.*, the son of the certificate-man, continued to reside with his mother in *S.* under the certificate granted to the father and his family, and, therefore, that the pauper could not gain a settlement by a hiring and service with *Ralph S.* But a doubt being afterwards suggested from the bar, whether some cases which had not been adverted to before might not vary the consideration of the question, the matter was directed to stand over for further argument. — LORD ELLENBOROUGH C. J. The opinion which I have formed does not appear to me to clash with the case of *Rex* v. *Heath*. (*b*) There, there was every thing which could well be predicated of emancipation: the marriage of the son; his living in a separate house from his father as the head of a distinct family; and being rated by the parish as such in his own name. Here there is nothing of the kind: while the father was living the son resided under his roof; and after the father's death he continued to reside with his mother, who was the representative of the father,

(*b*) *Ante*, pl. 762.

and equally protected by the certificate. This comes then directly within the principle of *Rex* v. *Hampton* (*a*), where it was holden, that an apprentice to the widow of a certificated man could not gain a settlement in the certificated parish after the husband's death. If this question had come now to be decided for the first time, I should have been prepared to decide on the plain words of the statute of *Anne*, referring to the statute 8 & 9 *W.* 3. *c.* 30. and 9 & 10 *W.* 3. *c.* 11., which have been broken in upon by many cases laying down rules and construction much less plain than the words of the statute itself. The statute 9 & 10 *W.* 3. *c.* 11. speaks of two methods only by which any person coming into a parish with a certificate shall by any act whatsoever be adjudged to have procured a legal settlement there: those are, by taking a tenement of the yearly value of 10*l.*, or by executing some annual office within the parish. Then the stat. 12 *Ann. st.* 1. *c.* 18. *s.* 2. enacts, that "if any person shall be an apprentice bound by indenture, or be a "hired servant to any person who *came into* (which extends to "such as came into the parish with the person certificated), or "*shall reside* in any parish by means or licence of such certificate," (which includes such persons as come into the parish afterwards, and reside under the protection of the certificate), "and not "having afterwards gained a legal settlement there," (which was in allusion to the methods pointed out by the stat. 9 & 10 *W.* 3. *c.* 11.) "such apprentice or servant shall not be adjudged thereby "to have a settlement in such place," &c. The object of the legislature by these acts certainly was to protect the certificated parish from sustaining any new burthen by persons gaining settlements there who were residing there upon the faith of these certificates, except by one or other of the methods pointed out. I am, therefore, decidedly against extending the construction of the statutes further than it has been carried. Now, who can be considered as a person residing by means or licence of a certificate, if the son of a certificated man, continuing to live with his father's widow in the certificated parish, is not such a person? If, as in the *Hampton* case, the widow of a certificated man were privileged to continue in the parish under the certificate after his death, as part of his family, so must his son by the same rule, who continued part of the same family. There was no emancipation in this case to distinguish it from the other; but it comes expressly within the principle of the *Hampton* case; and, what is more material, it comes directly within the meaning of the stat. of *Anne*.—GROSE J. A person is within the words of the statute of *Anne* who is serving another residing in any parish by means or licence of a certificate. Now, here *Ralph S.*, the son, either lived there as part of his father's or his mother's family during all the time; and it is not denied, that both the father in his lifetime, and the mother after his death, were residing in S. under the certificate. There was no emancipation of the son, no taking of another house for himself, nor any thing of the sort which occurred in *Rex* v. *Heath* (*b*); and there is no pretence for saying, that his going out for a few weeks at harvest-time would operate as an emancipation. We ought to be careful not to create more doubts, by refining away the meaning of the statute and prior decisions upon the subject.—LAWRENCE J. declared himself of the same opinion.—LE BLANC J. We are now called upon to put a construction upon the

(*a*) *Ante*, pl. 744.

(*b*) *Ante*, pl. 762.

statute 12 *Anne;* and as in the only case which turned on that branch of the statute, *Rex* v. *Hampton*, it was holden that the widow, after the husband's death, was still protected by the certificate as part of his family, and, therefore, that her apprentice serving her could not thereby gain a settlement in the certificated parish; so neither can the servant to the son, continuing part of the same family, gain a settlement there. — Both orders quashed.

Where the son of a certificated person (not named in the certificate otherwise than under the general appellation of the father's *family*) marries and lives in a house of his own, in the certificated parish, he ceases to be under the protection of the certificate as part of his father's family; and an apprentice may gain a settlement by serving such person in the certificated parish.

766. *Rex* v. *Mortlake* (*a*), *E. T.* 45 *G.* 3. 6 *East*, 397. — Two justices, by an order, removed *M. D.*, widow, and her several children by name, from *Mortlake* to *M.* The Sessions on appeal quashed the order (*pro formâ*) in order to take the opinion of this Court on the following case: *J. D.* and *A.* his wife, being legally settled in the parish of *H.*, in *February* 1700 went with a regular certificate from *H.* to *M.* in the same county, and during their residence at *M.* under such certificate had a son born there named *W.* Both *J.* and *W.* lived and died at *M.*, without having gained any settlement in that parish. *W. D.* left his father's family, married, and occupied a separate house of 4*l.* a year in *M.*, and had a legitimate son named *T.*, who in 1760, being several years after the death both of *J.* the grandfather and *A.* his wife, was regularly bound apprentice to his father *W.* by indenture for seven years, and served his apprenticeship under the same at *M.* *T. D.* was afterwards married, and had a son named *T.*, now deceased, who was the husband of the pauper *M. D.*, and the father of the four children removed with her by the order appealed against. The single question on the hearing of the appeal was, whether under the apprenticeship of *T. D.* the elder to his father *W. D.*, and the stat 12 *Ann. c.* 18., *T. D.* the elder had gained a settlement in *M.*; *T. D.* the younger not having gained any settlement in his life time, and the paupers having no other settlement there than a derivative one under the said *T. D.* the elder, who had done no act to gain a settlement in *M.*, unless he did so by serving the above-mentioned apprenticeship. The magistrates who heard the appeal (being 12 in number) were at first equally divided on this point; but one of the magistrates, whose judgment was against the appellant parties, waived it, in order that a decision might be entered at the present Session, and the case be determined by a superior court. The appeal was thereupon allowed by the magistrates at Sessions, and the original order quashed, with 40*s.* maintenance, subject to the opinion of the Court of King's Bench on the above points. — THE SOLICITOR GENERAL and MARRYAT, in support of the order of Sessions, admitted that *W.* the grandfather of the pauper, and son of *J.*, who originally came into the parish of *M.* with the certificate, was *emancipated* from *J.*, by marrying and living separately from him; but contended, that notwithstanding such emancipation *W.* still continued to reside in *M. under the certificate.* That a certificate extends to the *children* of the certificated person has been decided in a variety of cases from *Rex* v. *Sherborne* (*b*) to *Rex* v. *Alfreton.* (*c*) Then by the express words of the stat. 12 *Ann. st.* 1. *c.* 18. *s.* 2. "if any person whatsoever who shall be an apprentice bound "by indenture *to any person whatsoever* who did *come into* or "*shall reside in* any parish by means or licence of such certificate,

(*b*) *Ante*, pl. 733.

(*c*) *Ante*, pl. 596.

(*a*) See Rex *v.* Thwaites, *post*, pl. 768. Rex *v.* Morley, *post*, pl. 769.

" and not afterwards having gained a legal settlement (*a*) in such " parish; such apprentice by virtue of such apprenticeship, &c. " shall not gain any settlement in such parish," &c. This extends as well to the party who *comes into* a parish by means of a certificate, as to all such as *reside* in it by means of such certificate: the words of the act are in the disjunctive, " *come into* OR shall " *reside* in." Now, though after emancipation *W.* the son might, in conformity to the cases decided, be no longer said to have *resided in* the parish of *M.* under the certificate, yet he *came into* that parish by means of it, which is enough to exclude any person bound apprentice to him from gaining a settlement there. In *Rex* v. *Alfreton* the son of a certificated person who was bound apprentice to another master in the same parish could not gain a settlement there, even after he was emancipated by the death of his father: and in *Rex.* v *Hampton* (*b*), one who was apprenticed to the *widow* of a certificated man, whom she had married after the certificate granted, was also holden to be incapable of gaining a settlement by his service with her, notwithstanding the death of the certificated man before the binding. [THE COURT having pointed their attention to the cases of *Rex* v *Darlington* (*c*) and *Rex* v. *Heath* (*d*), in the latter of which it was expressly determined that the son of a certificated person marrying and living in a house of his own ceased to be under the protection of the certificate, and might gain a settlement in the certificated-parish in his own right.] They answered, that *Rex* v. *Darlington* had only decided that *grandchildren* were not within the certificate-act, 8 & 9 *W. c.* 30.; and that neither in that case nor in *Rex* v. *Heath* did the construction of the stat. of *Anne* with respect to apprentices come in judgment, as it did in *Rex* v. *Hampton*, where the settlement by apprenticeship to the widow of the certificated man was negatived. — LAWES and BARROW, *contrà:* The whole question turns upon the emancipation of *W.* the son of the certificated person; and when it was decided in *Rex* v *Heath* that the son of a certificated person marrying and living apart from his father was no longer protected by the certificate, but might gain a settlement in his own right, it necessarily follows that he may communicate a settlement to his apprentice, notwithstanding the stat of *Anne*, the object of which plainly was to prevent those who were themselves incapable by means of a certificate from gaining a settlement in the certificated parish from communicating a settlement to others who served them either as apprentices or servants. And the case of *Rex* v. *Hampton* turned altogether on the ground that the widow of the certificated man continued to be protected as part of his family by the certificate. — LORD ELLENBOROUGH C. J. The question is, Whether *W.* the son of *J.*, who was once covered by his father's certificate, ceased to be so when he married and lived separately from his father? for if he ceased to be covered by the certificate himself, there seems to be no reason why he might not communicate a settlement to another as well as gain one himself in the certificated-parish. Whether he ceased to be covered by it himself turns upon the meaning of the word

(*b*) *Ante*, pl. 744.

(*c*) *Ante*. pl. 742.

(*d*) *Ante*, pl. 762.

(*a*) The means of gaining a settlement by such person in the certificated parish are confined by stat. 9 & 10 W. 3. *c.* 11. to taking a tenement of 10*l.* a year, or executing some annual office in such parish.

family (*a*) in the stat. 8 & 9 *W.* 3. *c.* 30., which directs the certificated parish to receive the person mentioned in the certificate and his *family*. Taking that word in its largest sense, it would extend to cover all those who descended from and were of the original stock; but that would have been a very inconvenient construction of the act; the meaning of it, therefore, has been restrained, and in my opinion soundly and rationally restrained by the recent determinations in *Rex* v. *Darlington* (*b*) and *Rex* v. *Heath* (*c*), to those who constitute part of the existing household and family of the certificated person, or, as *Lord Kenyon* expressed it in *Rex* v. *Darlington*, those who form his fire-side. How then can that character apply to *W.* after he had married and left his father's house, and had become a new stirps, having a family of *his* own, in like manner as he had before been of his father's family? But it is said, that the case of *Rex* v. *Hampton* (*d*) has laid down a different rule with respect to apprentices. But that case was decided on the ground that the second wife continued after her husband's death to be the root and remains of the old family, and not a substantive distinct family, as here. She still continued as the representative of her deceased husband: but here the son had started for himself as the head of a new family, by marrying and taking a separate house for himself. He was then in a condition to gain a settlement for himself in the certificated parish. But the words of the stat. of *Anne* are relied on to show that he is not such a person with whom an apprentice bound to him could gain a settlement there; and it is said that they are in the *disjunctive*, "come into *or* reside in;" but upon referring to the certificate-act, the 8 & 9 *W.* 3. *c.* 30., which speaks of persons who "shall *come into any parish there to inhabit* AND *reside*," and the 9 & 10 *W.* 3. 11. which speaks of doubts having arisen upon the former statute, by what acts "any person *coming to inhabit or reside* within any parish by virtue of any such certificate may procure a settlement," and which enacts that no person who shall *come into* any parish (without more) by any such certificate shall gain any settlement there, except in certain ways mentioned; I say, upon comparing the words of the statute of *Anne* with the former provisions, I think those words must be read *copulatively*, and that they mean only to designate persons who may come into any parish for the purpose of residing, and actually reside there under a certificate. — GROSE J. The question is, Whether *W.* came unto and resided in the parish of *M.* by means of the certificate granted to his father and his family, or whether he were, in fact, part of his father's family at the time when his son *T.* served as apprentice with him? Now what is meant by the father's *family* was decided in *Rex* v. *Darlington* and *Rex* v. *Heath*; and the situation of *W.* at that time was, that he had left his father's house, was married, and had become a housekeeper himself, and was carrying on trade for himself. It is difficult to say what more would make a man cease to be part of his father's family if this would not. Then upon looking into the statute of

(*b*) *Ante*, pl. 742.

(*c*) *Ante*, pl. 762.

(*d*) *Ante*, pl. 744.

(*a*) William the son was born *after* his father John went into the parish of *Great Marlow* under the certificate. But where in Rex *v.* Testerton, 5 T. R. 258. the *son* was *named* in the certificate granted to his father, it was holden that he still continued protected by it, though he afterwards married and lived separate from his father.

Anne, and comparing it with the former acts, I agree entirely with my Lord's construction of it; and the case is neither within the words nor the sound sense of the act. — LAWRENCE J. I am of the same opinion. The case of *Rex* v. *Sherborne*(a) turned on considering the son as still continuing to be part of his father's family; but here, according to the decisions in *Rex* v. *Darlington* and *Rex* v. *Heath*, the son had ceased to be part of his father's family before the apprenticeship to him took place. The object of the statute of *Anne* was to prevent burthens being brought upon a parish by apprentices or servants serving certificated persons, whose residence in the parish was protected by certificates. And that reason applied as well to all other persons who were protected by the certificate, while they continued part of the certificated man's family; but as soon as any of the children ceased to be a part of the father's family by being emancipated, the parish-officers, if they thought that he was likely to encumber the parish, might have removed him, before the late act, and then all the mischief which was intended to be guarded against by the statute of *Anne* was done away, and it no longer applied. — LE BLANC J. It is immaterial whether the master of the apprentice were settled in the parish of *M.* at the time. The only question is, Whether the master were, within the meaning of the statute of *Anne*, such a person with whom no apprentice could gain a settlement by serving him? And that depends on whether the master were part of his father's family at the time when his own son *T.* was apprenticed to him. Now at that time he had ceased to be part of the father's family; the family itself was at an end, and *W.* the son was residing as the head of a distinct independent family of his own. He could no longer, therefore, be considered as residing under the certificate, because the certificate would not have protected him from being removed. Then there is no case which says that he was not such a person with whom an apprentice could gain a settlement. If this point had not been already decided in *Rex* v. *Darlington* and *Rex* v. *Heath*, I should not have hesitated to say now for the first time, that *W.* was not a person residing under the certificate as part of the certificated man's family at the time when his son was apprentice to him. — Order of Sessions quashed.

(a) *Ante*, pl. 733.

767. *Rex* v. *Stanley cum Wrenthorpe*, *E. T.* 52 *G.* 3. 15 *East*, 350. — Removal from *L.* to *S.* Order confirmed, subject, &c. On hearing the appeal it was proved that the grandfather of the pauper, his wife and daughter, came into *S.* with a certificate from *O.*, dated *Dec.* 5, 1727, owning them to be legally settled in *O.* No evidence was given of the pauper, his father, or grandfather, having gained a settlement in any other place since the date of the certificate: but it was proved and admitted that the pauper and his family had been relieved at different times by the overseers of *S.*, whilst residing at *L.*, and also whilst residing at *W.* The case of *Rex* v. *Wakefield* (b), was cited; and THE COURT were clearly of opinion, that the Sessions had drawn the right conclusion. — LE BLANC J. said, that there was nothing to rebut the presumption of a settlement in *S.* from the repeated acts of relief while the pauper and his family were residing out of the township. — And BAYLEY J. asked what there was in the case to show a derivative settlement under the grandfather still con-

Evidence of a settlement in A, by showing that the pauper's grandfather came into B, under a certificate from A, is rebutted by showing that B had relieved the pauper and his family while residing in other places.

(b) *Ante*, pl. 31.

tinuing. There was ample time intervening for the father to have been emancipated as well as the pauper himself: and there was no reason why the township of *S.*, who must have known the fact, should have relieved the pauper while residing in other townships, if they had not known that he was settled with them. — Orders confirmed.

A parish certificate granted to T. C., and J. his wife, engaging to receive them, *their child or children born or to be born*, only extends to a son, born at the time of granting the certificate, so long as he continues part of his father's family; therefore, where the son married, and resided with his family apart from his father, in the certificated parish: Held, that his apprentice gained a settlement by serving him in the said parish.

768. *Rex* v. *Thwaites*, *T. T.* 53 *G.* 3. 1 *M.* & *S.* 669. — Removal from *H.* to *T.*—Order confirmed, subject, &c. — The pauper was born in *T.*, but was afterwards regularly bound apprentice to one *R. C.* in *B.*, and duly served and resided his whole time (seven years) in *B.* *T. C.*, the father of *R. C.*, resided at *B.* under a certificate from *S.*, which acknowledged "the said *T. C.*, "and *Jane* his wife, to be legally settled within their township, "and that, as such, they did thereby promise and engage for "themselves and successors, churchwardens and overseers, to "receive them the said *T. C.*, and *Jane* his wife, *their child or* "*children born or to be born* in their said township, as persons "legally settled, whenever they or any of them should become "chargeable," &c. *R. C.*, the pauper's master, was born at the time of the certificate so granted and delivered; and during the time of the pauper's serving him, was a married man residing with his family in *B.*, apart from his father; but it did not appear that he had gained any settlement there: the question for the opinion of the Court is, Whether the pauper gained a settlement in *B.* by such service and residence with *R. C.*? — *Rex* v. *Sowerby* (*a*), *Rex* v. *Mortlake* (*b*), and *Rex* v. *Heath* (*c*), were cited. — LORD ELLENBOROUGH C. J. This appears very clearly to have been a service under an indenture of apprenticeship, to a person who at the time was not protected by the certificate, and, consequently, such a service as coupled with the residence will entitle the pauper to a settlement in *B.* The certificate engages "to receive "the father, and mother, their child or children born or to be "born." The parish, perhaps, did not know the name of the son, or probably they were ignorant of the fact that they had any son at the time; but it is clear that they meant only to comprehend the whole of the family, with which the parents should migrate. The parents do migrate with their son into another township, and there the son afterwards separates from them, and becomes himself the head of a distinct family, and so from that time was emancipated. This is a main feature that distinguishes this case from *Rex* v. *Sowerby*, where the party continued to reside with his mother, and brings it within the case of *Rex* v. *Mortlake*, which is also an authority to show that the pauper, by serving the son, under these circumstances, in the certificated township, will thereby gain a settlement in that township. — LE BLANC J. It seems to be admitted, that this case falls precisely within the determination of *Rex* v. *Mortlake*, unless it can be distinguished upon the terms of the certificate. The circumstance of distinction relied on is this, that the certificate is in its terms an acknowledgment of "the child or children born or to be born:" and this, it has been argued, is the same thing as if the child had been expressly named by his Christian name in the certificate. If this were so, there would be an end of the question; for it has been determined, and that determination has never been shaken, that a child named in the certificate stands precisely in the situation of the

(*a*) *Ante*, pl. 765.
(*b*) *Ante*, pl. 766.
(*c*) *Ante*, pl. 762.

father, that is, as one of the principals mentioned in the certificate; and, therefore, if the son had been named in this case, it would follow that a service with him as an apprentice would not have conferred a settlement in the certificated parish. No case, however, has been cited, and the industry of the learned counsel, who have argued this question, would probably have discovered one, if any such existed, to show that any thing less than an express mention of the person by name will have the same effect as naming him; or that describing him by the words "child born "or to be born," has ever been held to be equivalent. Where the child is named, there is some reason for saying, that he still remains under the protection of the certificate, notwithstanding his complete separation from his family; but the Court will not be disposed, at this time of day, to extend that doctrine to cases where he only comes under the general denomination of "child "born or to be born." If this be so, it seems to me that the case cannot be distinguished from *Rex* v. *Mortlake*. (*a*) We must then advert to that decision. It was there decided, that where the son of a certificated person (he not being named in the certificate, but only falling within it as one of his father's family) quitted the family, and married, and occupied a separate house in the certificated parish, he was no longer under the protection of the certificate; but was then in such a situation as to give his apprentice a capacity to gain a settlement by serving him in that parish. This was so decided by reading the conjunction "or" in the words of the stat. 12 *Anne*, "who did come into *or* shall reside in any "parish," as copulative. The Court thought, although the son, as one of the father's family, was once covered by the certificate, yet when he became the head of a distinct family, he no longer continued a person, within the meaning of the stat. of *Anne*, with whom an apprentice could not gain a settlement. In *Rex* v. *Sowerby* (*b*), the son was residing with his mother after his father's death, although he carried on business for himself: and the continuance under the maternal was considered the same as the paternal roof. The other cases relied on were cases where the child was named in the certificate. The current of all the authorities seems to decide this, that if a person, who is not named in the certificate, but only comes within the scope of it as being the child of a person named, abandon the roof of his parents, and become himself the parent stock of another family, such person is not only capable of gaining a settlement himself, but also of being the means of others gaining a settlement by service with him; although his father remains protected by the certificate. I am, therefore, of opinion, that the decision of the Sessions was wrong. — BAYLEY J. I am of the same opinion. If a certificate be granted to a person by name, the parish is bound to provide for him and his family; but if several members of a family be named in it, the parish must provide for each as distinct and separate members unconnected with each other. Who, then, are the persons named in this certificate, whom the township acknowledge as their inhabitants legally settled? The father and mother only; for "their child or children born or to be born," comprehends nothing more than their family; the children are to be received back as part of the family of the father; and not because they are acknowledged as settled inhabitants of the certifying township. In

(*a*) *Ante*, pl. 766.

(*b*) *Ante*, pl. 765.

the cases relied upon the certificate not only named the parents, but the children also. But where children come within the certificate, merely under the description of the family of the person named, *Rex* v. *Darlington* (a), *Rex* v. *Heath*, and *Rex* v. *Mortlake*, have decided, that they continue under the protection of the certificate so long only as they constitute a part of the family. That is the plain and broad line of distinction. — Order of Sessions quashed.

(a) *Ante*, pl. 742.

The son of a certificated person, who was not named in the certificate, upon the death of his father (being then resident with his mother under the certificate) was bound apprentice in the certifying parish, left his father's family, and served in that parish, under the indentures, for some years, and then returned, with his master's consent, to serve a person in the certified parish, where his mother and family resided under the certificate, and served that person until the expiration of his indentures, at which time, being of the age of 21, his mother still residing in the parish, he hired himself to the same person for a year, and served that and three successive years, in the certified parish: Held, that he gained a settlement by such hiring and service.

769. *Rex* v. *Morley*, *H. T.* 54 *G.* 3. 2 *M.* & *S.* 417. — Removal of *W. R.* from *A.* to *M.*—Order confirmed, subject, &c.—The pauper's father resided in *A.* under a certificate from *M.*, dated 1 *June* 1761, acknowledging him by name, his wife by name, and their three children, *Mary*, *Ann*, and *Alice*, to be legally settled in the township of *M.* The pauper, when he was about 12 years old, (his father being then lately dead, and he residing with his mother in *A.* under the certificate, as part of his father's family,) was bound apprentice by the overseers of *M.* to one *L.*, of *M.*, till his age of 21. He served in *M.* under the indentures seven years, and then, with his master's consent, returned to *A.*, where his mother and family then resided under the certificate, and still reside, to serve one *G.*, in *A.* The pauper continued in *G.*'s service till the expiration of his indentures. He then lived with *G.* for a year, and served a year, and remained with *G.* four years in the whole, living with him in *A.* during all that time. Upon the pauper's going to *A.* to serve out the remainder of his apprenticeship with *G.*, he did not go to his mother's house, nor at any time, during the rest of his apprenticeship, resided at his mother's as part of her family. The question made was, Whether the pauper gained a settlement in *A.* by hiring and service with *G.*?— In support of the order of Sessions, it was contended, that the pauper had not separated himself from his father's family, so as to enable him to gain a settlement by hiring and service in *A.*, the parish certified; and *Rex* v. *Keel* (b), *Rex* v. *Collingbourn Ducis* (c), *Rex* v. *Ingworth* (d), *Rex* v. *Roach* (e), were cited. — On the other side it was insisted, that the pauper, not being named in the certificate, continued under it only so long as he constituted a part of that family; and they cited *Rex* v. *Heath* (g), *Rex* v. *Mortlake*. (h) — LORD ELLENBOROUGH C. J. On this case it is material to observe, first, that the pauper is not named in the certificate, but merely comprehended under it as part of his father's family; secondly, that after the time of quitting his father's family he never returned to his mother's house, but continued to serve under the indentures until the age of 21, and then hired himself for a year, and served for a year, and so continued in the service for four years successively with the same master. And the question is, Whether, having so hired himself after the age of 21, he was in a capacity thereby to gain a settlement in *A.*? The negative of this question has been contended for, in support of the order of Sessions, on the statute 9 & 10 *W.* 3. *c.* 11., and on the authority of *Rex* v. *Collingbourn Ducis*, *Rex* v. *Keel*, and *Rex* v. *Ingworth*. The words of the statute are, "that no person whatsoever, who shall *come into* any parish by certificate, shall gain "any settlement unless he shall take a lease of a tenement, &c. or

(b) *Ante*, pl. 755. (c) *Ante*, pl. 262. (d) *Ante*, pl. 764. (e) *Ante*, pl. 72. (g) *Ante*, pl. 762. (h) *Ante*, pl. 766.

"execute some annual office," &c. But I observed before upon the first circumstance of this case, which is never to be lost sight of, that the pauper is not named in the certificate, and therefore he is to be considered as *coming into* the parish by certificate, only so long as he is a part of his father's family. And that brings it to the question, Whether he was a part of his father's family? In the case of *Collingbourn Ducis* (*a*), the pauper, after leaving his father's house, returned to the parish where his father was living under the certificate, being under age, and was hired in the certified parish, at which time he continued a part of his father's family. So in *Rex* v. *Keel* (*b*), the pauper returned to a branch of her family in the certified parish, and was there hired and served whilst under age. The case of *Rex* v. *Ingworth* (*c*) is the nearest to the present case; but there is this distinction, that the pauper returned under age to the father's house, and hired himself, whilst under age, to a person in the same parish; and although by comparing his age, when he first let himself, with the time when he last let himself, it does appear that he must have been of age at the commencement of the second year's service under the last letting, yet that circumstance seems to have escaped the notice both of the counsel and the Court; and the case was decided entirely on the authority of *Rex* v. *Keel*, which it was supposed exactly to resemble; but which, for the above reason, is not so. We do not think, however, that that is an authority to warrant us in deciding, that where a child, not named in the certificate, separates himself from his father's family at an age when he is by law capable of supporting himself, he shall either derive a settlement acquired subsequently by his father, or shall be prevented by the certificate from gaining a settlement for himself; which is a disability that can only attach on him as being one of the family. This is illustrated by *Rex* v. *Roach* (*d*), where a daughter, being of age, left her father's family, and hired herself to a farmer for eight weeks; during the time of her absence her father acquired a subsequent settlement, and it was determined that she was not entitled to such subsequent settlement, on the ground that she had ceased to be a part of the father's family, or, in the language of the case, was emancipated. That case was fully argued and considered; and it lays down a rule in precise terms, which may serve to govern others in future. The same point was determined in *Rex* v. *Cowhoneybourne*. (*e*) That was a case where the daughter, being under age, went to reside with her uncle, with her father's consent, and was maintained wholly by him, and continued with him till she was of the age of 27; and the Court held that she ceased on her coming of age to be a part of her father's family, although she had not acquired any distinct settlement for herself; and therefore the father acquired a settlement by hiring and service, as an unmarried man, not having a child within the words of the statute. It is true that these latter were cases where the question did not arise upon a certificate; but they establish a principle which shows what it is that constitutes a child a part of his father's family; and whatever divests him of the capacity as one of his father's family in the one case, divests him of the incapacity in the other. We are of opinion, therefore, that the pauper ceased to be a part of his father's family, and by the hiring and service gained a settlement in *A.* — Orders quashed.

(*a*) *Ante*, pl. 262.

(*b*) *Ante*, pl. 755.

(*c*) *Ante*, pl. 764.

(*d*) *Ante*, pl. 72.

(*e*) *Ante*, pl. 77.

V. *Of Evidence.*

Parol evidence of the existence of a certificate deemed sufficient.

770. *Rex* v. *St. Maurice, M. T.* 24 *G.* 2. *Burr. S. C.* 296. — *R. S.*, the father of *R. S.* the pauper, went into *St. Maurice*'s by a proper certificate from *St. Mary*; the son was born in *St. Maurice* under the certificate; and lived there with his father till he was bound apprentice to *M.* in *K.*; where he served seven years. But on the part of *St. Maurice*'s parish, parol evidence was given by the master *M.*, that he himself came into *K.* with a certificate acknowledging him to be a parishioner of *Micheldever*; and resided there, as a certificate-man, from *Micheldever*, during the whole time of the apprenticeship; which certificate from *Micheldever* he delivered to one *H.*, an officer of the parish of *K.* But there was also parol evidence given by one *E.* the present overseer of *K.* (who was served with a *subpœna duces tecum*) that there was now no such certificate to be found in that parish; and that he had never seen or knew of any such; and that if there had been any (*a*) such, it was mislaid. The only question was, Whether *parol evidence* was sufficient? — LEE C. J. The Sessions have admitted, and have stated the evidence on both sides; and conclude that as no certificate was produced, the place of settlement is not in *St. Mary*. So that it appears they did receive all the the evidence that was given; and it does not appear that there was any objection made to parol evidence. It is not now insisted upon, that this was conclusive evidence to the justices that there was a certificate. And if there was one, yet it might be an irregular certificate. We have an instance here of one, lately (*b*), to *Bethlem*, which did not conclude the parish giving it, as a proper certificate from that parish under the certificate-act, so as to bind them in other respects than that particular purpose for which it was given. Now the justices at Sessions are so far from having determined that parol evidence ought not to be admitted, that they have actually received all that was offered.

The bare production of a certificate of 30 years' date is sufficient, without giving any account of it.

771. *Rex* v. *Ryton, E. T.* 33 *G.* 3. 5 *T. R.* 259. — The respondents produced a certificate from the chapelry of *Little Ness*, acknowledging the father of the pauper to be legally settled in that chapelry. *J. G.* a parishioner and parish-officer of *R.*, who had property and paid parochial assessments there, was called to give an account of the certificate: it was objected by the counsel for the appellants, that he was not competent to give evidence on the aforesaid account, as being an interested witness. The Court of Sessions decided that the evidence was inadmissible; and the respondents producing no other evidence, the order was quashed. It was admitted by the counsel, though not stated in the case, that the certificate was dated more than 30 years ago, and appeared to have been regularly allowed; and that the witness was merely called to prove that he took it out of the parish chest, and gave it to their attorney just before the appeal. — THE COURT said, that no doubt could be entertained on this case; for that it was sufficient for the respondents barely to produce the certificate to the Sessions, without giving any account of it.

In order to prevent the settlement of an

771 a. *Rex* v. *Egremont, T. T.* 51 *G.* 3. 14 *East*, 253. — Removal from *E.* to *C.* Order quashed, subject, &c. — By the respondents

(*a*) This certificate, if there was any, must have been above 21 years ago.

(*b*) Hil. 1748, 22 G. 2. Rex v. St. Olave's, Southwark.

it was proved that the pauper had been regularly bound apprentice to *J. K.* in 1802, for seven years, and served with him for several years under the indentures at *E.*, and served more than 40 days of the latter part of his apprenticeship with *J. B.* in *C.*, with the consent of his original master, and resided with him there for that period. The appellants then produced a regular certificate from a friendly society to prove that *J. B.* was then residing at *C.*, under such certificate, and, therefore, that the apprentice could not gain a settlement by serving him under the indenture. And the only question was, Whether the production of this certificate was sufficient evidence under the stat. 33 *G.* 3. *c.* 54. without proof of its having been *delivered* to the churchwardens and overseers of *C.*? In support of the order of Sessions it was contended, that the Sessions under the circumstances, might presume that the certificate had been delivered, as it was produced in court by the parish-officers of *C.* the appellant parish. — LORD ELLENBOROUGH C. J. To warrant them in presuming any fact there must be presumable matter, the mere *giving* of the certificate by the society to a member, is not made sufficient by the act to protect his residence under it in the parish, without a delivery of it to the parish-officers. The 17th section says, that no member of the society who shall come to inhabit in any parish, *and shall deliver to the churchwardens or overseers* of the poor of such parish, a certificate, &c. shall be removed till actually chargeable. But if it remain in the pocket of the certificated person, that is not sufficient to prevent a settlement being gained under him. Here, then, is an absence of any proof of its having been delivered to the parish-officers before the period when the apprentice served his master in the parish of *C.*, and, therefore, an exclusion of any presumption of the fact. — Order of Sessions quashed.

apprentice bound to a master who was residing in the parish under a certificate from a friendly society, under 33 G. 3. c. 54. it is not sufficient for the certificated parish, merely to produce the certificate upon appeal to the Sessions from an order of removal of the apprentice to such parish, but they must also shew that such certificate had been delivered to the parish officers before the service of the apprentice.

772. *Rex* v. *Debenham*, *M. T.* 59 *G.* 3. 2 *B.* & *A.* 185. — Removal from *D.* to *K.* Order quashed, subject, &c. — The pauper had gained a settlement by hiring and service in the parish of *D.*, unless it could be shown that the father at the time resided in that parish, under a certificate from the parish of *K.* It was proved that no such certificate could be found in the custody of *D.* The pauper's father, *J. D.*, proved, that in the year 1771, having been removed from *D.* to *K.*, the parish officers of *D.* refused to allow him to return, unless *K.* would grant him a certificate; to this the parish officers of *K.* consented. An order for granting this certificate was made at the quarterly meeting of the directors and guardians of the incorporated hundreds of *L.* and *W.*, (in which *K.* is situated,) as appeared by an entry in the minute book of the proceedings of the hundred-house quarterly meetings, dated 20th *March* 1771. And to prove that such certificate was delivered to the respondent parish in pursuance of such order, a book was produced from the parish chest of *D.*; on the outside of the cover was "Certs. Recd., Bonds do., Coppys of "Orders, 1756." This book contained memorandums of orders of removals, of bonds, and certificates received. The certificates were regularly numbered, and under the title of certificates received, was the following entry, dated 1771, "No. 88. *J. P.* from "*K.*, No. 89. *J. D.*, do." There were a variety of other certificates subsequently entered; the Sessions were of opinion that this book was not admissible in evidence. — ABBOTT C. J. The prin-

On an appeal, the respondents, in order to prove the fact of the delivery to them of a certificate given by the appellants, acknowledging the pauper to be their settled inhabitant, produced an old book from their own parish chest, in which was an entry of that fact in the handwriting of a former parish officer: Held, that such evidence was inadmissible.

ciples of the law of evidence in this country are founded on the strongest sense and soundest reasoning. It is of the first importance to preserve them strictly, inasmuch as they are the great safeguards of the subject in the administration of justice in all cases, from those involving property of the most trifling amount, to those where the life of an individual is at stake. I, therefore, should be extremely unwilling to come to any decision which should break in upon any established principle. It is an established principle, that nothing said or done by a person, having at the time an interest in the subject matter, shall be evidence either for him or persons claiming under him. Now the entry in this book is of that description; for it is made by a person having an interest to make it, inasmuch as it is produced as proof of the delivery of a certificate, by which the parish of which the party making an entry is an inhabitant is to be relieved from the burden of maintaining the individual named in the certificate. I think, therefore, that the safest course which the Court can pursue will be to hold that the Sessions were justified in rejecting this evidence. There are, however, in this case, other circumstances from which the Sessions may draw the conclusion (if they shall think fit so to do) that the certificate was in fact delivered. I think, therefore, that the case should go back to be reheard upon that point. — BAYLEY J. I am entirely of the same opinion, that the entry in this book was not evidence, the effect of it being to advance the interest of the person who made it. — HOLROYD J. concurred. — Case sent back to the Sessions to be reheard.

A parish certificate of more than 30 years date acknowledging the pauper's grandfather, and father to belong to the appellant parish produced by a rated inhabitant who was overseer of the respondent parish, was held to be evidence, though it was objected that some account should be given of it, and that the witness was not competent to give that account, and it seems that if necessary he might be examined as to the custody.

(a) *Ante*, pl. 771.

773. *Rex* v. *Netherthong*, *H. T.* 54 *G.* 3. 2 *M.* & *S.* 337. — Upon an appeal against an order of removal from *N.* to *H.* the respondents called a person who was a rated inhabitant and overseer of the poor of *N.*, who produced a certificate dated in the year 1756 from *H.* to *N.*, acknowledging the pauper's grandfather and father to belong to *H.* The appellant's counsel objected that before such certificate could be received and read in evidence, some account must be given of it and whence it came, which he contended the witness was not competent to give, on account of his being a rated inhabitant of *N.*, and the Court being of that opinion refused to permit the witness to give evidence and discharged the order, subject to the opinion of this Court, whether such evidence ought to have been received. When this case was called on, STAVELEY, in support of the order of Sessions, admitted that after the decision of *Rex* v. *Ryton* (*a*) he could not sustain the ruling of the Sessions, but he prayed that the case might be remitted to be heard on the merits. LORD ELLENBOROUGH C. J. I remember upon the trial of an action for a false return to a *mandamus*, a corporator was called to produce some of the corporation muniments, and objection taken to his admisibility. But Lord *Kenyon* said he should hold him capable, as a depository of the muniments, of being brought forward for the purpose of producing them, and that if the party objecting wished to enquire as to the custody he might, and that he would receive the evidence. If the parties choose to stand on such a point as this it may be as well that they should abide by it. — PER CURIAM: Order of Sessions quashed.

CHAPTER XI.

REMOVAL OF THE POOR.

I. *The Statutes.*
II. *The Authority of the Justices.*
III. *The Style of the Justices.*
IV. *The Complaint to be made.*
V. *The Examination.*
VI. *The Adjudication.*
VII. *The Direction of the Order.*
VIII. *Description of the Parties.*
IX. *Of Passes.*
X. *Suspending an Order of Removal or Pass.*
XI. *Of returning after Removal.*
XII. *Of Orders unappealed from.*
XIII. *Of Removals after Appeal.*

I. *The Statutes.*

See stats. 13 & 14 *Car.* 2. *c.* 12. § 1, 2, 3. 3 *W.* 3. *c.* 11. § 10. 17 *G.* 2. *c.* 5. 33 *G.* 3. *c.* 54. § 26. 33 *G.* 3. *c.* 55. 35 *G.* 3. *c.* 101. § 1. 49 *G.* 3. *c.* 124. 54 *G.* 3. *c.* 170. 59 *G.* 3. *c.* 12. § 28.

II. *The Authority of the Justices.*

774. *REX* v. *Banbury*, *T. T.* 8 *W.* 3. *Comb.* 372. — A constable without warrant, brought a child from *Broughton* to *Banbury*. Two justices of *Banbury* made an order of removal in which they recited the fact, and returned the child to the parish of *Broughton*, there to be provided for according to law. — THE COURT held the order good for returning the child to the wrong-doers, and therefore that part was affirmed. justices of B.

A child brought by a constable from the parish of A. to R. *without warrant* may be removed to A. by the justices of B. S. C. Comb. 364.

775. *Walton* v. *Chesterfield*, *M. T.* 8 *W.* 3. 5 *Mod.* 322. — An order was made to remove a poor man from *W.* to *C.* The Sessions, on appeal, confirmed the order. But the first order was now quashed, because it did not appear to be made by two justices of the peace; for it was only said, "Whereas complaint has been "made to us," without reciting their authority in the order; and although in the appeal they were mentioned to be justices, yet that will not help; for they might be justices then, and not at the making of the first order; and so for this reason it was quashed.

In an order of removal the authority of the justices must be stated.

776. *Bridewell* v. *Clerkenwell*, *H. T.* 4 *W.* 3. *Salk.* 486. — The pauper was bound an apprentice, and served seven years to a hempdresser within the precincts of *B.*, and afterwards he lived nine years in *C.* parish, but gained no settlement there. The justices sent him to *B.*, as his last legal settlement, by an order which set forth *B.* to be an extraparochial place. — HOLT C. J. If a place be extraparochial, and has not the face of a parish, the justices have no authority to send any man thither; and so it was resolved

The justices cannot remove a pauper to an extraparochial place.

in the case of Sir *John Osborn*. Possibly a place extraparochial may be taxed in aid of a parish, but a parish shall not in aid of that. This is *casus omissus*. — The order was quashed.

The justices cannot remove *from* an extra-parochial place, because there are no parish-officers to lodge the complaint; and therefore overseers must be first appointed. S. C. Foley, 97.

777. *The Forest of Dean* v. *Linton*, *T. T.* 12 *W.* 3. 2 *Salk.* 487. — *H.* lived ten years in the forest of *D.*, and then died, and left several children; two justices made an order to remove them to *L.* — HOLT. If a place be a reputed parish, and have churchwardens and overseers of the poor, it is within 43 *Eliz. c.* 2. though in truth it be no parish; but if it be merely extraparochial, as the justices cannot send to such a place, so they cannot send from it; as it is exempt from receiving, so it shall not have the benefit of removing, for they have not proper persons to complain. Persons in extraparochial places must subsist on private charity, as all persons did at common law before 43 *Eliz.*, which enacts, that every parish shall keep their own poor, in consequence of which the jurisdiction of removals was first set up before the statute of 14 *Car.* 2. *c.* 12.; for unless the poor were removed to their own parishes, every parish could not maintain their own poor. But the statute of 43 *Eliz. c.* 2. does not extend to extraparochial places. — GOULD J. started a question, whether the justices of the county, where the parish wherein he was last legally settled lies, might not make an order upon the parish to make a rate for the relief of this poor man in the extraparochial place, because, not having gained a settlement there, he remains an inhabitant of that parish still; else the man may be starved for want of relief. — HOLT C. J. Quash this order, and then go and get an order, "Forasmuch as *H.* was settled in the parish of *L.*, and is not able "to provide for himself, these are," &c.

An order removing a pauper to a *master* by whom she had been hired for a year, instead of to *the parish* in which she was settled, is bad.

778. *Rex* v. *Gravesend*, *E. T.* 13 *W.* 3. *Com. Rep.* 97. — Two justices sent *Jane G.* from *G.* to her master, with whom she lived as a hired servant in *Chadwell*, concluding the order "until "she shall be discharged." The justices of *E.* sent her back to *G.* It was insisted, that the second order was ill, being made before the time for appealing against the first order had expired. — SED NON ALLOCATUR; for the first order was to send her to her master, from which order no appeal lies, and not to send her to the parish of *Chadwell* as to the place of her settlement.

The justices cannot order the officers of the parish where a pauper is settled, to relieve her, she being too ill to be removed. But see 35 G. 3. c. 101.

779. *Clypton* v. *Ravistock*, *E. T.* 12 *Ann. Sett. & Rem.* 49. — The order recited, "WHEREAS *John S.* and his wife are last set-"tled at *C.*, these are to order you the churchwardens of *C.* to "repair to the parish of *R.*, and to relieve them, they being so "sick that they cannot be removed." — THE COURT: The justices have no authority to send for officers out of another parish, but are bound to maintain the poor as long as they continue with them. — And by POWELL J. Persons settled in a parish cannot be relieved until they are removed to their parish. — The order was quashed.

The justices have no power to make an order of removal to continue "till the next Session."

780. *Braitar* v. *Usley*, *H. T.* 12 *Ann. Sett. & Rem.* 53. — Two justices made an order of removal to continue "until the next "Sessions;" and then the Sessions made a further order for the settlement of the pauper. — THE COURT quashed both the orders; for the two justices have no authority to make an order "till the "next Sessions;" nor have the Sessions authority to make an original order in this respect.

781. *Pancras* v. *Rumbold*, *T. T.* 2 *G.* 1. *Str.* 6. — Two justices removed a poor person from *P.* to *R.* Within three days the justices, reciting that they were surprised, superseded it, and commanded the churchwardens to return the former order to be cancelled. — WHITAKER Serjeant, insisted, that the justices could not issue such a *supersedeas*; and cited *Salk.* 472. — SED PER CURIAM: The *supersedeas* is well sent by the justices, and to prevent the charge of an appeal; and the last order was confirmed.

If the two justices make an order of removal improvidently, they may grant a *supersedeas*.

782. *Rex* v. *Westwood*, *H. T.* 4 *G.* 1. *Str.* 73. — In an order of removal the complaint was recited to be to one justice only, but the ordering part was by two justices; and this was held good. Then exception was taken, that there was no adjudication of the place to which he was removed being his last legal settlement, but only "We order him to be removed to *A.* as the place of his last "legal settlement." And for this fault the order was quashed.

A single justice may hear the complaint, but the order of removal must be by two. S. C. Sett. and Rem. 107.

783. *Chewton* v. *Compton Martin*, *M. T.* 8 *G.* 1. *Str.* 471. — Two justices made an order for the removal of two different families. REEVE objected, that though the parishes are the same in both cases, yet the removal of two families by one order is ill; for suppose the removal of one is legal, and the other illegal, and there is an appeal to the Sessions as to both, and the order is confirmed as to one, and reversed as to the other, what is to be done in that case as to costs, the statute of 8 & 9 *Will.* 3. *c.* 30. giving costs to the parish in whose favour the appeal is determined, and now the appeal will be determined in favour of neither, and of both; it cannot be said that the order is reversed, because it stands good as to part, and it cannot be said to be confirmed, because it is not held good as to the whole. — EYRE and FORTESCUE Js. were of opinion, that the order was ill; giving this further reason; that the party removed had a right to appeal, for it may be he was removed from his own estate, and then upon his appeal it will consequentially draw over the other matter in which perhaps the parties on all sides acquiesce.

Two justices cannot remove more than one family by the same order of removal.

784. *Rex* v. *Mereval*, *H. T.* 10 *G.* 3. *Burr. S. C.* 661. — Two justices removed *Rebeccah C.*, single woman, and *J.* her child, upwards of five months old, from *B.* to *M.*; and the Sessions confirmed the order. The pauper was hired for, and served a year in that part of the parish of *M.* that is within the county of *Leicester*; and there was an overseer of that part of the parish of *M.* which lies in the county of *Warwick*; to which officer the pauper was delivered; but there was not, nor ever had been, any overseer of the poor appointed for that part of *M.* that lies in the county of *L.*; although there are several houses and substantial inhabitants in that part of the parish of *M.* that lies in the county of *L.*; the same person who was overseer was also churchwarden of *M.*; and usually acted in the maintenance of the poor throughout the whole parish. — Mr. WHELER objected, That the appointment of an overseer by the justices for the county of *Warwick* could not affect that part of the parish of *M.* which lies in the county of *L.*; for, by 43 *Eliz.* *c.* 2. § 9. "If any parish "extend into more counties than one, the justices of every county "shall deal only in so much of the parish as lies within their li-"berties; and every one within their limits, to execute the or-"dinances concerning the nomination of overseers," &c. Therefore that part of this parish of *M.* which lies in *Leicestershire* must be

If a parish lie in two counties, and an overseer be appointed by the justices of one of the counties, any two justices may remove a pauper into that part of the parish for which no overseer is particularly appointed; for as to this purpose the person chosen by the one county, is the officer of the whole parish.

considered as *extraparochial*, until overseers are properly appointed for it; and no removal can be made to it, until overseers, or an overseer at least, shall be so appointed. — But it was answered, that the churchwardens are sufficient officers in this respect; they are overseers, to this purpose: and THE COURT being clearly of that opinion, both orders were affirmed.

The justices cannot remove a pauper to a hamlet within a parish, unless it is a township or vill within the 13 & 14 Car. 2. c. 12.

785. *Rex* v. *Tamworth*, *T. T.* 17 *G.* 3. *Cald.* 28. — The case stated, That *Thomas G.*, the pauper, was legally settled in the hamlet of *B.*; and that afterwards he was hired for a year, and served that year at *S.*; which is a hamlet consisting of one house only, and between three and four hundred acres of land: that the said hamlet of *S.* had never contributed towards the relief of the poor of the parish of *T.*, nor had ever been assessed thereto; but had always been assessed, and had always paid to the support of the parish church of *T.*: that no overseer or overseers of the poor had ever been appointed for the hamlet of *S.*; that the said hamlet lies without the limits and jurisdiction of the borough of *T.*, but is within the parish of *T.*; that the pauper, *Thomas G.*, *Elizabeth* his wife, and their child, were, under the order of the two justices, delivered to the churchwarden of the parish of *T.*, which parish not only lies partly in the county of *W.*, and partly in the county of *S.*, but is a part thereof within the limits and jurisdiction of the borough of *T.*, and part thereof without the said limits and jurisdiction. — LORD MANSFIELD: There is no doubt at all. The place is averred to be within the parish where the hiring and service were had and performed; and it is no township or vill within the stat of *Car.* 2. where officers are appointed; and therefore the justices could not remove the pauper there. The state of places as to the number of houses may have been different in different cases, but here are no overseers, no separate economy. The adjudication is to *S.*, as part of the parish of *T.* — ASTON J. This place is neither extraparochial or a vill. In the case cited of the manor of *Grafton*, it was holden no vill, though it had been converted into five dwelling-houses and farms, and was occupied by five several tenants. — WILLES and ASHHURST Js. concurred.

The justices cannot make an order of removal to a place which does not maintain its own poor separately. S. C. Cald. 248.

786. *Rex* v. *Swalcliffe*, *H. T.* 23 *G.* 3. EDITOR'*s MSS.* — The paupers, *Thomas H.* and *Mary* his wife, were removed in the month of *January* 1782, from *S.* to *A.*, which is a large and populous district, part of the parish of *W.*, and maintains its own poor in common with *W.*, and not by any separate establishment of its own. One of the questions in this case was, Whether justices of the peace have authority to remove a pauper except to a parish, or to a district exclusively maintaining its own poor? And it was contended by Mr. BEARCROFT, that as *A.* maintained its poor not exclusively, but in common with *W.*, the removal to *A.* was a nullity. — LORD MANSFIELD: The justices have no authority to remove to such a place as *A.*; it is no removal at all; it is a mere nullity. The justices might as well make orders of removal to a man's house. — ASHHURST, WILLES, and BULLER, Js. concurred, and the order was quashed.

An alteration may be made in an order of removal, by one justice in the presence of the

787. *Rex* v. *Llanwinio*, *M. T.* 32 *G.* 3. 4 *T. R.* 473. — By an order of two justices, dated *October* 29th, 1789, *A. Evan*, his wife, and five children, were removed in *December* 1790 from *H.* to *L.*, both in the county of *C.*; the Sessions confirmed the order, subject to the opinion of this Court on a case reserved. The case stated

that an alteration was made in the order of removal by one of the magistrates immediately after the order was signed by both, but in the presence of the other, and before it was delivered to the parish-officers to be executed; and that it was not re-sealed and re-delivered by the justices after the alteration. The appellants objected that the order was void in point of law on this ground, but the Sessions over-ruled the objection. — LORD KENYON C. J. The objection arising from the alteration of the order is equally destitute of foundation; it is stated that the alteration was made in the presence of the other magistrate. Such an alteration, so made, would not vitiate a much more serious instrument than this, a warrant by which the life of a person is to be decided.

An order of removal signed by two justices separately, in different counties, is only voidable and not void. See Rex v. Howarth, *post*, pl. 822.

788. *Rex* v. *Stotfold*, *E. T.* 32 *G.* 3. 4 *T. R.* 596. — The order of removal, and the examination on which that order was founded, were signed and taken by the two justices separately, and not in the presence of each other; and one of the two justices, though a magistrate for the county of *H*, took the examination and signed the order at his own house, situate in that part of the town of *R.* which lies in the county of *C.*; *R.* being partly in the county of *C.* and partly in the county of *H.* — THE COURT took time to consider of this case: and now LORD KENYON C. J. said, that he was not then prepared to state from his papers the reasons at length upon which their judgment was founded, but that he had thoroughly and attentively considered the question, and that the result of his deliberations and of the rest of the Court was, that the order was only *voidable*, not absolutely *void*; and, therefore, that it was necessary for the parish, who wished to avoid it, to have appealed against it in the regular course of proceedings. That it would be extremely inconvenient to permit a parish to set aside an order of removal at any distance of time, which had been acquiesced under for years without any dispute. And that a distinction had always prevailed between void and voidable instruments; a strong instance of which was that on the construction of the stat. *Westminster* 2. *c.* 1.; which, though it enacts that all fines contrary to that act shall be *ipso jure* null, has been held to mean only *voidable* by some legal proceeding. (*a*) — GROSE J. also added, that in a case in *Strange* (*b*) it was held that the Sessions "have power to look "into the jurisdiction of the justices" removing.

(*a*) But see Rex v. Hamstall Redware, *ante*, pl. 508.

(*b*) Albrighton and Skipton, *post*, pl. 797.

It must appear on the face of an order of removal, that the justices making it have jurisdiction. See Rex v. Stepney, *post*, pl. 799.

789. *Rex* v. *Chilvers Coton*, *H. T.* 39 *G.* 3. 8 *T. R.* 178. — The pauper, *W. Fennell*, was born about 55 years ago in *Sow*, but was settled in *C.* In 1779 he married his present wife in *B.*, where he then resided. They were afterwards removed to *Sow* by the following order; "To the churchwardens and overseers of the poor "of the parish of *B.* in the county of *W.*, and to the churchwardens and overseers of the parish of *Sow* in the county of the city of "*Coventry*; whereas complaint has been made by you the churchwardens and overseers of the poor of the said parish of *B.* unto "us whose hands and seals are hereunto set, two of his majesty's "justices of the peace (whereof one is of the *quorum*) for the county "aforesaid, that *W. Fennell* and *E.* his wife," &c. &c. The other parts of the order were in the regular form; the order was dated 16th of *March* 1779; and there was no county mentioned in the margin of the order. Against this order there was no appeal. And THE COURT was of opinion that the order was not amenable

by the Sessions, and that it was a nullity, for that it did not appear on the face of it that the justice had jurisdiction.

Where two counties have been mentioned in the antecedent part of an order of removal, the justices making the order must state themselves to be justices of the proper county; and it is not enough to describe themselves justices of the peace in and for the *said county*, although the proper county were named in the margin, and were also named last before such description of the justices.

(*a*) But see Rex *v.* St. Mary, Leicester, *post*, pl. 791.

790. *Rex* v. *Moor Critchell* (*a*), *M. T.* 42 *G.* 3. 2 *East*, 66.— Two justices, by an order, removed *D. S.*, his wife and children, from the parish of *Donhead*, in the county of *W.* to the parish of *M.*, in the county of *Dorset*. The Sessions, on appeal, confirmed the order. But both orders being removed by *certiorari* into this court, a rule was obtained, calling on the parish-officers of *Donhead* to show cause why they should not be quashed, for a default of jurisdiction in the magistrates making the original order apparent upon the face of it, in not stating them to be justices of the peace of the county of *Wilts*. The order was in this form: "*Wilts* to wit; to the churchwardens and overseers of the poor of "the parish of *Donhead, in the county of Wilts*, aforesaid, to re- "move and convey, and to the churchwardens and overseers of "the poor of the parish of *M., in the county of Dorset*, to receive; "these. Whereas, complaint hath been made by you, the church- "wardens, &c. of *Donhead, in the county of Wilts aforesaid*, unto "us whose hands and seals are hereunto subscribed and set, *being* "*two of His Majesty's justices of the peace in and for the said* "*county*, (one whereof is of the quorum,) that *D. S.*, &c. are come "to inhabit, &c. (pursuing the usual form of such orders)."— BURROUGH and CASBERD now showed cause, and contended, 1st, That the words "justices of the peace *in and for the said county*," must have reference to the county in the margin, which is *Wilts:* 2dly, That it has reference in grammatical construction to the last antecedent county mentioned, which is also *Wilts*. And further, that from the whole scope of the order, it appears that it could only have been made by magistrates of *Wilts* and not of *Dorset*. But THE COURT were clearly of opinion, that the objection was fatal. (*b*) It ought expressly to appear that the justices had jurisdiction to make the order, and therefore there having been two counties mentioned before, they ought to have stated of which county they were justices. But LORD KENYON C. J. added his regret that the objection had been taken, as the decision would conclude nothing; for the Court would direct a special entry to be made, in order to denote that the orders were quashed for want of form. And that it was to be lamented that the stat. 5 *G.* 2. *c.* 19., which was intended to give the justices in Sessions a power of amending orders of removal which were defective in point of form, had, by the construction which had been put upon it, been rendered a dead letter, as all defects of this sort had been considered to be matters of substance and not of form.

(*b*) Vide Rex *v.* Stepney, *post*, pl. 799. and Rex *v.* Chilvers Coton, *ante*, pl. 789.

An order of magistrates was directed to the parish of W. in the county of *Rutland*, and also to the parish of M. in the county of *Leicester*, and the words "county of *Rutland*," were *then written in*

791. *Rex* v. *St. Mary, Leicester, H. T.* 58 *G.* 3. 1 *B.* & *A.* 327. — Removal from *W.* to *St. M.* Order confirmed and removal by *certiorari* into the Court of King's Bench.— The order was in this form: "County of *Rutland*.— To the churchwardens and over- "seers of the poor of the parish of *W.* in the said county; and "to the churchwardens and overseers of the poor of the parish "of *St. M.*, in the borough of *Leicester*, in the county of *Lei-* "*cester*, and to each and every of them: — *Rutland* to wit: Upon "the complaint of the churchwardens and overseers of the poor "of the parish of *W.*, in the said county, made unto us, whose "names are hereunto set, and seals affixed, being two of His "Majesty's justices of the peace in and for the said county, and

" one of us of the quorum, that *M. B. &c.* are come to inhabit," &c. (in the usual form). The cases of *Rex* v. *Chilvers Coton* (*a*), and *Rex* v. *Moor Critchell* (*b*), were cited.—LORD ELLENBOROUGH C. J. If this Court is put under the painful necessity of overruling the case of *Rex* v. *Moor Critchell*, in order to do justice in this case, I have no hesitation in so doing. The words " justices of " the peace in and for the said county," in that case immediately follow the words, " the county of *Wilts* aforesaid," and in plain grammatical construction can have reference to the county of *Wilts* only. For the word *said* must have reference to the last antecedent, and I wish that the very able and very learned judge who decided that case, instead of lamenting that such an objection had there been taken, had applied his powerful mind to the objection itself, and I have no doubt that it would have vanished before that mind exerting its proper vigour on the subject. Here there is first, " county of *R.*," in the margin; then comes the words, " parish of *Wing* in the said county;" that must mean the county of *R.*, if we are to give the word *said* any meaning at all. Then immediately follows the words, " justices of the " peace for the said county;" that must therefore also have reference to the county of *R.* The grammatical construction and plain meaning of the instrument direct us to that conclusion alone.—BAYLEY J. It it impossible to doubt in this case to what county the magistrates who made this order belonged. *Rex* v. *Moor Critchell* is undoubtedly a very strong authority, and perhaps not distinguishable from this case; but that case does not convince me. I think the Court ought there to have come to a contrary conclusion. In that case the words " said county," could only mean in grammatical construction and common sense the county of *Wilts*. Now here, " said county" must mean *Rutland*, and not *Leicester*. Besides, in this case, after the direction of the order, there are found in the margin the words " county of " *R.*, to wit," which makes the case much stronger. Then, if there be no doubt to which county the word *said* refers, the objection cannot prevail.—ABBOTT J. The case of *Rex* v. *Moor Critchell*, was a decision not establishing any general rule of law, but turning upon the construction of the terms of that particular instrument, and has not, I believe, been since recognized or acted upon. Even if this case were precisely similar to that, I should say that the Court there had not adopted the true construction, nor that which was warranted by the ordinary rules of criticism or language. Here, however, there is a distinction; the county here is named for the second time in the margin, and we may therefore begin to read the instrument from that part; if so, there will be no doubt; for the county of *R.* is the only county named to which the word *said* can have any reference.—HOLROYD J. I am of opinion that this order ought to be affirmed. It appears in the beginning of the order, that the " parish of *Wing* " in the said county," must have reference to the county of *R.*; and it is afterward stated, that the justices made the order, upon complaint of the churchwardens and overseers of that parish. Then, as no other justices, except magistrates of the county of *R.*, could by law make the order, the Court will intend that the words " said county" have reference to the county where the magistrates had jurisdiction. for that construction which supports,

the margin, and the magistrates were in a subsequent part of the order described as justices of the peace *for the county aforesaid*: Held, that it thereby sufficiently appeared that they were justices for the county of *Rutland*.

(*a*) *Ante*, pl. 789.
(*b*) *Ante*, pl. 790.

and not that which destroys the instrument, may fairly be adopted; and the words "said county," may *ut res magis valeat quam pereat* have reference to the county of *R.* — Order affirmed.

The pauper, being a settled inhabitant of A, subsequently acquired a settlement in the township of B. The latter township afterwards ceased to exist as a place capable of maintaining its own poor: Held, notwithstanding, that the previous settlement in A having been extinguished, the pauper could not be removed thither from a third town as to the place of his last legal settlement. *Query*, Whether in such a case a removal to the parish of which the township of B formed a part, would not be good?

792. *Rex* v. *Saighton-on-the-Hill*, *M. T.* 59 *G.* 3. 2 *B.* & *A.* 162. — Removal from *St. B.*, to *S.* Order confirmed, subject, &c. — The pauper being settled in *S.*, acquired a subsequent settlement in the township of *G.*, in the parish of *St. M.*, in the city of *Chester*, in which parish there are several townships, each separately maintaining its own poor. Of these townships, *G.* was one, and was situated in the county palatine, and not in the city. At the time the pauper obtained a settlement in *G.*, it was a township, having overseers, and maintaining its own poor, which continued to be the case, until about 10 years ago, when all the houses in the township were taken down for the purpose of enlarging *Chester* castle. There are now no buildings in the township of *G.*, except part of the courts of the county, and some barracks and other buildings belonging to the barrack-board. No overseers have been appointed for the township of *G.* for the last 10 years, and there is no place within the township inhabited by persons capable of being appointed overseers. — ABBOTT C. J. The authority of magistrates to remove paupers exists only, and is derived from the express provisions of an act of parliament; and, in a new case, the best mode for the Court is to form their judgment on the very words of the act. There may be many cases, where a pauper, having no settlement in the place where he may happen to be, may still not be removable from it; either because he has no settlement at all, or because the parish-officers are not enabled to discover the place of his settlement. The words of the act are, that any two justices of the peace may, by their warrant, remove and convey persons likely to be chargeable to the parish where he or they were last legally settled. It is therefore enough for the Court, in deciding this case, to say that *Saighton* is not the parish where the pauper was last legally settled, inasmuch as he appears to have subsequently acquired a settlement in *G.*, by which the former settlement was extinguished. The justices, therefore, in this case, had no authority to remove the pauper, and the Sessions have done wrong in confirming their order. BAYLEY and HOLROYD Js. concurred. — Both orders quashed.

Where the unemancipated daughter of an *Irishman*, not having acquired any settlement of his own in *England*, became pregnant, being unmarried, and as such was actually chargeable under 35 *G.* 3. *c.* 101. *s.* 6.: Held, that this did not make her father and *the rest of his*

793. *Rex* v. *Whitehaven*, *E. T.* 3 *G.* 4. 5 *B.* & *A.* 720. — Upon an appeal by the inhabitants of *W.*, against an order of removal of *M. M'C.*, from *Whitehaven* to *Workington*; the Sessions quashed the order, subject, &c. The pauper, *M. M'C.*, an unmarried woman with child, and thereby chargeable, but who had not applied for or received parochial relief, was removed from *W.* to *W.*, as the place of her birth settlement. The pauper, at the time of her removal, was above the age of 21, had gained no settlement for herself, was unemancipated, and living with her father and mother, as part of their family. The father and mother were both *Irish*, and had gained no settlement in *England*. The father had not applied for or received any relief from the removing township, for himself or any part of his family. The father was not examined by the removing magistrates. The question for the opinion of the Court was, Whether, under the provisions of the 59 G. 3. *c.* 12., and the above circumstances, the

pauper was properly removed to the place of her birth settlement. — PER CURIAM: We are of opinion that the chargeability contemplated by the legislature in 59 *G.* 3. *c.* 12. § 33. was the actual asking for parish relief, and not the constructive chargeability created by 35 *G.* 3. *c.* 101. § 6. The order of Sessions is wrong, and must be quashed. — Order of Sessions quashed.

family removable by a pass to *Ireland* under 59 G. 3. *c.* 12. § 33.; but that the daughter might be removed by an order to the place of her birth in *England*.

794. *Rex* v. *Oakmere*, *E. T.* 3 *G.* 4. 5 *B.* & *A.* 775. — Two justices, by their order, dated *April* 1st 1821, removed *John B.* from *Over Tabley* to *Oakmere*. The Sessions, on appeal, confirmed the order, subject, &c. The township of *O.* was before, and until the passing of a certain act of parliament in the 52d year of His late Majesty, part of the forest of *Delamere* in the county of *Chester*, and an extraparochial place. Under and by virtue of the said act, intituled, "An act for inclosing the forest of *Delamere*, in the county of "*Chester*," the forest was, in *December* 1819, duly divided into four separate townships, of which *O.* was one. Since that time overseers of the poor have been duly appointed for the township of *O.* The pauper, *John B.*, was born many years ago, a bastard, in *O.*, whilst it was an extraparochial place, and part of the forest of *Delamere*. The question for the opinion of the Court was, Whether such order of removal to *O.*, as the birth-place of the pauper, could be sustained? The following were the clauses in the local act, on which the question depended, "And be it further enacted, That the district called or known by "the name of *Delamere Forest*, and all such lands, lying contiguous "thereto, as are now extraparochial, shall, as soon as the moiety of "the said forest, which is hereby directed to be allotted to and "amongst the persons enjoying rights of common thereon shall have "been so allotted, divided, and inclosed, be and be deemed and "taken to be a parish, and called and known by the name of *Dela-*"*mere* parish, and shall for ever thereafter be and be deemed and "taken to be a rectory." "And be it further enacted, That the said "commissioners shall, and they are hereby authorised and required "to divide the said parish into two or more townships, to be called "and distinguished by such names as the said commissioners shall "appoint; and when the same shall be so divided, each and every "such township *shall, from thenceforth for ever thereafter, provide* "*for its own poor, make and maintain its own roads, and have, en-*"*joy, and be vested with such and the like powers, privileges, and im-*"*munities, and be subject to the same regulations as are incident to,* "*and as are had, held, and enjoyed by the several other townships* "*within the said county of* Chester, by *the laws and statutes of that* "*part of the United Kingdom of Great Britain and Ireland called* "*England*." — ABBOTT C. J. This case arises on the act 52 *G.* 3. for enclosing the forest of *Delamere*, and the question is, Whether the district newly created into a township under this statute, which before was neither in any parish nor township, is to be considered as if it had formerly been a parish or township, with regard to settlements; or, only as becoming so from the time of its creation under the act, and as if it had formerly been wholly uninhabited. And we are of opinion, that the latter is the true construction and effect of the statute. If the former construction should be adopted, much inconvenience and litigation might ensue. Many parishes, wherein paupers have been considered as legally settled, and have

Where a district previously extraparochial, was by act of parliament made a township; and it was provided, that from thenceforth it should maintain its own poor and repair its own roads, and have the like powers, privileges, and immunities, and be subject to the same regulations as other townships within the county: Held, that this clause was prospective only, and that a bastard born within the district previously to passing the act was not settled there.

accordingly been maintained, might relieve themselves from their burthen, by removing to this new township not only illegitimate persons born within the district whereof the township consists, but also many of those who had been servants or apprentices, or had rented tenements of the yearly value of 10*l.* within it. By such removals a heavy burthen might be thrown at once upon the new township. It is true, on the other hand, that the new township, having now overseers, may remove persons which the inhabitants of the district could not previously do: but then the inhabitants were not previously under the same legal obligation to maintain the poor who might be found within it, as a parish or township; the consequence of which must have been that such poor would, in general, find their way without removal into those parishes or townships that were compellable to maintain them; so that the new power of removal would not be likely to afford a relief commensurate with the new burthen: and the former want of the power of removal might have the effect of charging this new township with the maintenance of persons under circumstances in which, if the district had been previously a township, the inhabitants might have taken care to prevent the burthen from falling upon them, as by the removal of unmarried pregnant women, or of persons coming to settle on tenements under 10*l.* a year, especially before the stat. 35 *G.* 3. *c.* 101. The latter, indeed, would not acquire a settlement for themselves, but settlements might be derived under them by apprentices and servants; and this is not like the case of a modern appointment of overseers to places that formerly had no such officers; because all such places must have been vills from time immemorial, and, consequently, under a legal obligation to maintain their poor, and possessing a legal *right* to the appointment of officers, and by such appointments to remove persons under the same circumstances as other townships or parishes might do. The consequence of this opinion is, That both the orders must be quashed. — Both orders quashed.

III. *The Style of the Justices.*

An order of removal need not state that the justices were *of the division* in which the paupers lived.

795. *Anonymous*, *M. T.* 8 *Will.* 3. 3 *Salk.* 473 — An order was made by two justices to remove a poor person; and exception was taken, that it did not appear by the order that the justices were of the division, or that either of them was of the *quorum*. — The last was held a good exception, but the first over-ruled, for in that the statute is only directory.

In an order of removal the persons removing must be styled "justices of the peace."

796. *Rex* v. *Upton*, *M. T.* 10 *Ann. Sett. & Rem.* 27. — EARL moved to quash an order of removal, because it did not state that the justices who made it were justices of the peace; it only said, "*coram* A. *et* B. justices of *the county*," but not of *the peace*. — GAPPER: The subsequent words, "*quorum unus*," ascertain that they were justices of the peace. — But THE COURT said, that there is a *quorum* besides our commission of the peace; and the order was quashed.

An order of removal was formerly bad, unless it appeared that one of the justices was of the *quorum*.

797. *Albrighton* v. *Skipton*, *E. T.* 6 *G.* 1. *Str.* 900. — Upon an appeal from an order of removal made by two justices (*quorum unus*), the Sessions, reciting that they had perused the charter of *A.*, and it not appearing *thereby* that the two justices were either of them of the *quorum*, therefore they quashed the order of removal. — PER CURIAM: The order of Sessions must be quashed, not for

want of any power in the Sessions to look into the jurisdiction of the two justices, for that they certainly have, but because that want of jurisdiction is not sufficiently alleged, since they might have a jurisdiction, though it did not appear upon the charter of *A.* The Sessions should have said in general, that it appeared to them that the two justices were neither of them of the *quorum*, and that would have been good cause to quash the order of the two justices. (*a*)

If an order state the justices to be justices *in* the county instead of *for* the county, it is bad. S. C. 2 Sess. Cas. 76.

798. *Rex* v. *Owlton*, *M. T.* 13 *G.* 1. 2 *Salk.* 474. — FENWICK moved to quash an order of removal, which set forth, that "upon "complaint of the churchwardens and overseers of the poor "of the parish of *K.* unto us whose names are subscribed, two of "His Majesty's justices of the peace *in* the county aforesaid, "*quorum unus*," &c. The exception was, that the word *in* went to the point of their jurisdiction; for it only appeared that they lived *in* the county, and not that they were justices *for* the county, and if so they had no authority to make this order. And he cited the case of *Rex* v. *Dobbyn* (*b*), where an order of justices was quashed because it did not appear that they were justices *of* the county or *for* the county, but only residing *in* the county. — THE COURT held this a fatal exception, and quashed the order for that reason.

(*b*) Salk. 474.

If an order be directed to the officers of two parishes in different counties, and the justices are stated to be "justices for the county *aforesaid*," it is bad for uncertainty. See Rex *v.* Chilvers Coton, *ante*, pl. 789.

799. *Rex* v. *Stepney*, *E. T.* 8 *G.* 2. *Burr. S. C.* 23. — Two justices removed *A. B.* from *C.* in *Bucks* to *S.* in *Middlesex*. An exception was taken, that the order of the two justices was too uncertain, having no county mentioned in the margin, and being directed to the churchwardens and overseers of two parishes in two different counties (*viz. S.* in *Middlesex* and *C.* in *Buckinghamshire*), and they only called themselves justices of the peace for the *county aforesaid;* so that they do not appear to have any jurisdiction; for by 13 & 14 *Car.* 2. *c.* 12. the jurisdiction is given to the justices of the county where the pauper comes to inhabit. And it is incumbent upon the justices to show that they have jurisdiction: it ought to appear upon the face of their order that they were justices for the county of *Bucks;* and for this reason the order was quashed.

An order of removal stating the justices to be justices for the county by its common appellation, as *Shropshire* instead of *Salop*, is good.

800. *Rex* v. *Madeley*, *H. T.* 16 *G.* 2. *Burr. S. C.* 202. — Two justices removed the pauper from *L.* in the county of *Salop*, to *M.* in the county of *Stafford*. Exception was taken, that it did not appear that the two justices who made it were justices of or for *any county*, it being only said "for the county of *Shropshire*," and there is no such division as the county of *Shropshire*. — THE COURT held, that "*Shropshire*" being the common appellation of the county, it was well enough, both in orders and acts of parliament.

An order of removal in which the justices state themselves to be justices for "a

801. *Rex* v. *Andover*, *M. T.* 24 *G.* 3. *Cald.* 373. — Two justices, in an order removing *Ann Day* from *A.* in the county of *Southampton*, to *L.* in the county of *Berks*, stated themselves to be "two of His Majesty's justices of peace for the borough *or*

(*a*) But by 7 G. 3. c. 21. If in any city, borough, town corporate, franchise, or liberty, they have *one*, and no more than one justice actually of the *quorum*, all aids, orders, adjudications, warrants, indentures of apprenticeship, or other instruments, done or executed by two or more justices qualified to act within such city or other place, shall be valid, although neither of the said justices shall be of the *quorum*. See also 26 G. 2. c. 27.

borough *or* town and parish," is sufficiently certain.

" town and parish of *A.*," &c — THE COURT: Enough appears to support the order; for both town and borough are coupled with parish; and they sufficiently appear to be justices of either of those places for which they were empowered to make this order.

IV. *The Complaint to be made.*

Qu. If an order stating it made upon complaint of the churchwardens of a borough, be good?

802. *Macclesfield* v. *Leithfrith, MS.* — An order was made on the complaint of the churchwardens, &c. of the borough of, &c.: to which it was objected, that a borough may consist of several parishes, and then it becomes uncertain which of the parishes are grieved. — By THE COURT: Take a rule to show cause.

An order of removal must not only state it to have been made *upon complaint*, but upon complaint *of the parish-officers*.
S. C. 5 Mod. 149.
Carth. 365.
3 Salk. 254.
12 Mod. 89.
Sett. and Rem. 18.
Foley, 72.

803. *Weston Rivers* v. *St. Peter's, E. T.* 1 *Ann.* 2 *Salk.* 492. — Upon an order of two justices it was objected, that it was said to be upon complaint only, and not upon complaint of the churchwardens, &c. — THE COURT was clearly of opinion, that it must appear upon an order of removal to have been made on complaint of the churchwardens, &c. But it appearing that the return stated it to be upon the complaint of the churchwardens, it was urged that the defect of the order was supplied by the return of the *certiorari;* and at another day, HOLT C. J. pronounced judgment. This exception is fatal; for no person can disturb a man coming into a parish, but they that have authority to do it: a complaint, *ex officio*, from one not concerned, is nothing; it may be the parish are willing to keep him; and as to the return, that cannot cure the order, for they had exercised their authority before; and by the *certiorari* they have no power but to return the order *in hæc verba;* and, therefore, what they think to return farther the Court can take no notice of.

But an order referring to the person by whom the complaint was made is good.

804. *Rex* v. *Kidderminster, H. T.* 8 *Ann.* 11 *Mod.* 265. — It was moved to quash an order of removal, directed " To the overseers " and churchwardens of the parish of *K.*, &c.;" and then reciting, " Whereas complaint has been made by you," without expressly naming the person by whom the complaint had been made. — But THE COURT held that the order was good, because it referred to the person before mentioned.

An order of removal stating that it was made upon complaint of the two parishes is good. See Horsham v. Henfield, *post*, pl. 809.

805. *Spalding* v. *St. John Baptist, M. T.* 9 *Ann. Foley*, 267. — This was an order of removal directed " To the churchwardens " and overseers of the poor of the parish of *S.*," AND " To the " churchwardens and overseers of the poor of the parish of " *St. John Baptist.*" — WHEREAS complaint has been made *by* " *you* unto us," &c. without saying which of the parishes made the complaint. — PARKER, C. J. Surely it is well enough; for if both complain, it must be upon the complaint of the right parish. — THE COURT would not quash the order.

An order of removal stated to be made upon hearing " the differences, allegations, proofs," &c. is bad; for they do not amount to a *complaint*.

806. *Shackford* v. *Northbovey, M. T.* 10 *Ann. Sett. & Rem.* 33. — CRUISE moved to quash an order of removal on the ground of there being no *complaint* stated in it. — KING submitted that the words of the rule, *viz.* " Upon hearing the differences, al- " legations, and proofs," &c. were tantamount to a complaint. — THE COURT held not; and so it was quashed.

An order cannot remove

807. *Rex* v. *Newington, T. T.* 10 *Ann. Sett. & Rem.* 45. — Whereas *J. S.* had intruded into the parish of *A.* and is likely to

become chargeable: THESE then are to remove *him* with three children. — THE COURT quashed this order; for the justices have removed more persons than were complained of.

more persons than the officers have complained of.

808. *Rex* v. *Graffham*, *E. T.* 12 *Ann. Sett. & Rem.* 16. — The order set forth, that *Tate* and his wife do endeavour to intrude into the parish of *A.*, and are likely to become chargeable, and therefore the justices remove them. — RABY: Here is not a sufficient complaint nor authority for the justices to found this order upon; for they have no power to send a person away by an order, unless he has actually intruded into the parish. — THOMPSON: The order, says he, is "likely to become chargeable;" and how can he be so, unless he was actually in the parish? — PARKER C. J. The party, being poor, is likely to become chargeable; but by the words of the order, he has only endeavoured to come into the parish, which cannot be construed as importing that he is actually come into the parish. — And, PER CURIAM, the order was quashed.

An order of removal stating that the pauper hath *endeavoured to intrude* into the parish is bad: for he cannot be removed from a place in which he never was.

809. *Horsham* v. *Henfield*, *E. T.* 5 *G.* 1. *Burr. S. C.* 24. — The order was expressed to be made "on complaint by you," in general, not saying which parish complained. — THE COURT held, that the complaint must be necessarily intended to be made by that parish who were aggrieved by the residence of the paupers.

An order of removal in which the *complaint* is expressed to be made by "*you*," without saying which parish complained, held good. See Spalding v. St. John Baptist, *ante*, pl. 805.

810. *Rex* v. *South-Marston*, *T. T.* 5 *G.* 1. *Str.* 189. — The order run, "Whereas *J. C.* and his wife *is* come into your parish endeavouring to settle *themselves* contrary to law, and *are* likely to become chargeable: these are therefore to require you to convey the said *C.* and his wife *from your* said parish to the parish of *A.*," &c. — MARTIN moved to quash the order, for the uncertainty whether the husband or wife came into the parish, it being in the singular, when it should have been in the plural number. — PRATT C. J. I do not think it necessary to show they came in; but this is only an "endeavour to settle;" and that may be where the party never came in, as the case of children born in one parish, when the settlement of the parent is in another. But if it were necessary, it is implicitly set forth, which in the complaint is sufficient. To which POWYS and EYRE Js. agreed. — Et PER FORTESCUE J. The only two things requisite for the justices to adjudge, is the place of the last legal settlement, and that the party is likely to become chargeable. And these must be positive, though as to the complaint it is well enough to take it by implication. This is not false grammar, as *doth* was in *West*'s case, for it is common for *Latin* authors to put the singular number where there are two nominative cases. *Horace* says, *Detar nobis locus hora.* If it were necessary to strain a point, we might refer *is* to the husband, and then the wife will follow of course. — The order was confirmed.

In an order of removal it is necessary to show that the persons removed actually came into the parish, and endeavoured to settle.

811. *Rex* v. *Hareley*, *H. T.* 12 *G.* 2. *Andr.* 361. — ABNEY moved to quash an order of justices for the removal of a pauper, because there was no *complaint* set out therein; and this, he said, had been held a fatal objection. — MAKEPEACE answered, that it was only a matter of form. — THE COURT: This is the foundation of the jurisdiction of the justices; and therefore they quashed the order.

An order of removal is bad if it do not set forth any complaint made; for *the complaint* is the foundation of the justices' jurisdiction.

812. *Rex* v. *Standish*, *T. T.* 13 & 14 *G.* 2. *Burr. S. C.* 150. — Upon an order of two justices removing *Mary K.* from *U.* to *S.*, an objection was taken, that it did not appear in the order that the *com-*

An order of two justices need not state that the *com-*

plaint was made upon *oath*.

complaint was made upon *oath*. On the other side it was contended, that this was not necessary, and the case of *Rex* v. *Southwold* was cited. (*a*) The order was quashed upon another exception; but the COURT said, that the statute does not require a complaint upon oath.

The omission of *complaint* and *adjudication* in an order of removal, is not matter of form, and therefore cannot be amended by Sessions. S. C. 2 Sess. Cas. 142. 2 Burr. 163.

813. *Great Bedwin* v. *Wilcot*, *T. T.* 15 *G.* 2. 2 *Str.* 1158.—An order of two justices was made, without saying that it was upon complaint of the churchwardens and overseers, or that one of the justices was of the *quorum*, or that the *pauper* (who was a certificate-man) was become actually chargeable. Upon appeal to the Sessions, they set all this right, under 5 *G.* 2. *c.* 19., which empowers them to amend defects in form, and proceed to the merits. — SED PER CURIAM: This is going too far; they are to amend defects in form, before they go into the merits; whereas here they must go into the merits before they can introduce the amendment. It was never designed they should insert new facts, but only amend the informal way of setting out the facts which were stated. The order therefore for the amendment must be quashed, and also the original order.

An order of removal made upon complaint that M. S. the wife of W. S., who is absent from her, is come to inhabit, &c., and is now with child, which is likely to be born a bastard, adjudging the said M. S. to be actually chargeable, was held sufficient in form, although the complaint did not state that the pauper was actually chargeable.

814. *Rex* v. *Inskip-with-Sowerby*, *T. T.* 56 *G.* 3. 5 *M.* & *S.* 299. —Two justices removed *Margaret S.* from *I.* to *P.* by the following order: "County of *Lancaster*, to wit.—Complaint having been made "by the churchwardens and overseers of the poor of the township "of *I.* unto us two of His Majesty's justices, &c. that *Margaret S.* the "wife of *William S.*, a soldier in the army, and absent from her, is "come to inhabit in the said township of *I.*, not having gained a "legal settlement there, nor produced any certificate owning her to "be settled elsewhere, and that she is now with child, which child is "likely to be born a bastard, and that her last legal settlement *is* in "the township of *P.* in the said county. We the said justices, upon "due proof made thereof, and likewise upon due consideration had "of the premises, do adjudge the said *M. S.* to be actually chargeable to the township of *I.*, and do also adjudge her last legal settlement to be in *P.*" And then it proceeded to order her removal in the usual way. The Sessions, upon appeal, quashed the order for insufficiency of form, because it was not stated in the *complaint that the pauper was become actually chargeable*, subject to the opinion of this Court as to the validity of the objection. — And now the case being called on, THE COURT, without hearing any argument, were of opinion that the order of removal was sufficient, for the complaint states the premises from whence the conclusion necessarily arose under the act of parliament (*b*), that the pauper was to be deemed chargeable, and the justices have drawn the conclusion. — Order of Sessions quashed.

(*b*) 35 *G.* 3. *c.* 101.

V. *The Examination.*

The person to be removed ought to have notice of, or be present at, *the examination*.

815. *Anonymous*, *E. T.* 10 *Will.* 3. *Comb.* 478. — A pauper ought to have notice, and to be heard before he is removed; but it is not absolutely necessary; yet if it can be, it is fit it should be done.

(*a*) Burr. S. C. 140. The objection in this case was, that there was no oath stated in the order, of the likelihood of the paupers to become chargeable; it was only "upon complaint of the churchwardens and overseers," &c. not saying that it was founded on oath. —*Lee* C. J. It is said, "upon *due* "*proof* made thereof, we do adjudge," &c. which is enough.

816. *Ware* v. *Stanstead*, *T. T.* 12 *W.* 3. 2 *Salk.* 488. — An order was made by *two justices* to remove *H.* from *W.* to *S.* An exception was taken to the form of the order, because it was said, "It appears upon examination before *us or one of us*," &c. and the *examination* ought to be before both; because both are to make the *judgment* of removal. — COOPER said, that by 14 *Car.* 2. *c.* 12. *the complaint* is directed to be made to any justice, and therefore *the examination* also may be before one justice; and that it was only necessary that two should join in removing. — GOULD J. The statute directs, and the practice is to make complaint to one justice, and then he grants his warrant to bring the poor man before two justices, and then those two justices are to examine and remove. — And, PER CURIAM, the order was quashed.

An order of removal stating that the examination was before *us* or *one of us*, is bad. 7 Mod. 54. See *post*, pl. 817.

817. *Munger-hunger* v. *Warden*, *H. T.* 10 *G.* 1. 2 *Sess. Cas.* 40. — An exception was taken to an order of justices for the removal of a pauper, that it is said to be made upon *due examination*, without saying that the examination was taken upon *oath*. — THE COURT. It is enough to say the order was made upon *due examination*, without saying *upon oath*, though the statute directs the examination to be upon oath; for when it is said in *an order* to be "upon due examination," it shall be intended to be "upon oath," according to the statute: and in the case of *Rex* v. *Cirencester* (*a*), this term, it was held sufficient to recite in the order, that upon "due examination of the party, and upon "his affirmation," &c. without adding that the party was *a quaker*.

An order of removal stating that it was made on *due examination*, is good, without stating that the examination was *on oath*.

(*a*) *Ante*, pl. 521.

818. *Rex* v. *Wykes*, *T. T.* 11 *G.* 2. *Str.* 1092. — It was held, that though the complaint of a pauper's settlement may be to one justice, yet the *examination* ought to be by two, and those that sign the order of removal.

The *examination* must be by *the two justices* who sign the order.

Salk. 488. Andr. 238. See Rex *v.* Stanstead, *ante*, pl. 816.

819. *Rex* v. *Wykes*, *T. T.* 11 & 12 *G.* 2. *Andr.* 238. — An information was moved for against two justices for signing an order of removal without summoning the party. — The COURT granted the information.

An order of removal ought to state that the paupers were summoned and heard.

820. *Rex* v. *Fetherton*, *H. T.* 13 *G.* 2. 2 *Sess. Cas.* 45. — The order was, "Whereas complaint has been made to us *A.* and *B.*, "&c. we do adjudge upon *due consideration* of the complaint." — An exception was taken, because from aught that appears, it might be made by the justices of *their own thinking*; for it should be mentioned that the order was made upon *due examination*, as in the cases of *Rex* v. *Cirencester* and *Rex* v. *Nuchee Wharton*. — But by THE COURT: As the order is said to be made upon "due consi- "deration," that implies "a due examination," and therefore it is well.

An order of removal, stating it to have been made upon *due consideration* instead of *examination*, is sufficient.

821. *Rex* v. *Coln St. Aldwin's*, *M. T.* 13 *G.* 2. *Burr. S. C.* 136. — The order of removal was made by two justices of *Wiltshire*, on an examination of the mother of the child removed, taken before two justices of *Middlesex*, which had been transmitted to the justices of *Wiltshire*, with an affidavit, verifying that it was duly taken. It was contended, that a certificate of one justice is to be regarded by another justice, but that upon the present occasion it did not rest merely on a certificate; for the justices of *Wiltshire* for themselves adjudge, "that it appears to them upon "due examination and enquiry upon oath into the premises." — LEE C. J. It is plain, that these *Wiltshire justices* have grounded their adjudication upon the examination transmitted to them from

The justices of one county cannot make an order of removal on an *examination* taken and transmitted to them by justices of another county, although such examination be verified by oath that it was duly taken.

the *Middlesex justices*. What they examined and inquired into upon oath, was the conveyance of the child out of one parish into the other. Now the examination on which they relied, being taken by two justices of another county; and the person examined by those justices remaining still alive, for aught that appears to the contrary; it is plain, this deposition ought not to have been received as evidence to ground their adjudication upon; though it might perhaps have been used as concurring evidence. I have often heard it declared here, and by *Eyre* J. particularly, that both justices ought to be present at the *vivâ voce* examination of the witnesses. — PAGE J. I remember a case where it was determined that both justices must be present; and that it is not sufficient for one justice to examine the matter and transmit it to the other, and that other to sign the order without examining into the matter himself. If the woman was alive, she ought to have been examined by these justices themselves. But even supposing that she was not alive, yet still I do not know that they could regard that *Middlesex* examination. It does dot appear that the *Middlesex justices* had any jurisdiction, for no complaint appears to have been made before them; and if not they could have no jurisdiction. The justices having set forth, though they were not bound to do it, the grounds of their adjudication, the Court will judge of the sufficiency of them. — CHAPPLE J. concurred in opinion. He agreed to what PAGE J. had last said; and he remarked, that the justices found this their adjudication of the place of settlement wholly upon the transmitted examination, which they ought not to have admitted at all. The other evidence related only to the coming into the parish.

The *examination* of a pauper for the purpose of removal must be taken and signed by the same two justices in the presence of each other.

822. *Rex* v. *Howarth*, *T. T.* 13 & 14 *G.* 2. *MSS.* — The Court granted an information against a justice of peace, for *signing his* own and his father's name (another justice of peace) to an order of removal of a bastard child; the act of parliament expressly directing that it shall be done by two justices, and upon examination before them: whereas the justice whose name was signed by the other was at a great distance from the place, and was not at all privy to the transaction; and this therefore is an illegal act in respect to the consequence of it to the pauper and to the burthen of the parish; and though it is sworn that the practice in this county was for one justice to sign the name of another, that will not excuse him, but is rather a greater reason for granting the information, that this illegal practice may be put a stop to. A case was cited of *Rex* v. *Wykes* (*a*), where the Court held, that an information should go against three justices for granting an order of removal; three having signed it, and only one of them having examined the party.

(*a*) *Ante*, pl. 819.

An order of removal need not state an *examination* or *summons* of the pauper.

823. *Rex* v. *Bagworth*, *E. T.* 22 *G.* 3. *Cald.* 179. — The order was, "Whereas we, the said justices, upon examination *of the* "*premises* upon oath, and other circumstances, do adjudge the "same to be true," &c. — DAYRELL contended, that it did not appear to have been made upon proper and sufficient evidence, it being made only upon examination *of the premises*; and that an inquiry generally into the subject-matter is not enough, for that the pauper himself must be examined. — BULLER J. It cannot be necessary in all cases that the pauper should be examined. On that of an infant of tender years it would be impossible.

There is no such general rule. — HOLT C. J. says (*b*), "If it can "be, 'tis fit it should be so, but not absolutely necessary."

(*b*) *Ante*, pl. 795.

The testimony of the father to prove the derivative settlement of his children, may be dispensed with where his attendance cannot be procured.

824. *Rex* v. *Bucklebury*, *E. T.* 26 *G.* 3. 1 *T. R.* 164. — An order removing three children, all under the age of seven years, stated, "We the said justices, upon due proof made thereof, as well as "upon the examination of *Elizabeth* their grandmother upon oath "as otherwise, and likewise upon due consideration had of the "premises, do adjudge," &c. — WILSON contended, that the order was informal, because it appears on the face of it to be granted on the examination of the *grandmother*, and not on that of the *father* of the children, which ought to have been heard before the justices made the order. But THE COURT were clearly of opinion that there was no objection.

The death-bed declarations of paupers respecting their settlements are evidence; as are also, when they are dead, their general declarations.

825. *Rex* v. *Bury*, *M. T.* 25 *G.* 3. *Cald.* 482. — Two justices remove *Alice Holt*, late wife of *John Holt*, and her six children, from *Bury* to *Ratcliffe*. The Sessions on appeal adjudge the settlement to be in *Bury*, discharge the order, and state the following case: That the counsel for the respondents stated, that his case depended upon proof, that *John Holt*, late husband and father to the paupers, had served an apprenticeship in the parish of *Ratcliffe* about 27 years ago; and that such apprenticeship would be made out by the following evidence: that in the first place he would prove by the evidence of persons who knew and were well acquainted with the said *John Holt*, that he, the said *John Holt*, lived with one *Greenhalgh* of *S.* in the said parish of *R.*, for the space of 18 months, about 27 years ago: that the said *Greenhalgh* taught the said *John Holt* the art of a fustian-weaver; that one *Meadowcroft*, one of the witnesses so to be called, and who was an apprentice to the said *Greenhalgh*, worked in the same loom-house, and slept in the same bed with the said *John Holt* at the said *Greenhalgh*'s house at *S.* aforesaid, during the said 18 months; that the said *John Holt* and the said last-mentioned witness were treated in all respects alike, were taught alike, and worked alike during the said 18 months; that it would appear by the evidence of the widow, *Alice Holt*, that none of her children had obtained a settlement in their own right; that her husband, the said *John Holt*, while on his death-bed and a few days before his death, had told her, that she and her children would belong to and prove their settlement in the parish of *Ratcliffe*; for that he had served an apprenticeship with *Greenhalgh* in that parish; that it would appear by the evidence of the said *Meadowcroft*, that while the said *John Holt* lived with him as aforesaid in the family of the said *Greenhalgh*, that he heard the said *Greenhalgh* often say, that the said *John Holt* was his apprentice for three years; that the said *John Holt* told the said *Meadowcroft*, that his father had paid to his master, *Greenhalgh*, a sum of money to give up the indenture of apprenticeship; and that the said *Meadowcroft* and his father and mother were invited to the burying of the old wife, meaning the cancelling of the indentures; that it would appear by the evidence of one *Taylor*, that she was intimate and well acquainted with the said *Greenhalgh*'s family, and also with the family of the father of the said *John Holt*; and that the father and mother of the said *John Holt* had told her, that one *Lomax*, a schoolmaster, had filled up the indenture of apprenticeship between the said *John Holt* and the said *Greenhalgh*; that, while

the said *John Holt* was in the service of the said *Greenhalgh*, she, the said *Taylor*, was commissioned by the mother of the said *John Holt* to go to the said *Greenhalgh* and tell him, that his parents wanted to have him home again; that the said *John Holt* afterwards told this witness, that an agreement was made between the said *Greenhalgh* and his parents for his discharge from the said indenture, and that the said indenture was by the consent of all parties burnt; and that she heard the said *Greenhalgh* say "I have "done my best to teach him, meaning the said *John Holt*, his trade, "and he is a very good weaver;" that she the said *Taylor*, knew *John Holt* to be in the family of *Greenhalgh* all the time she lived there; and has heard *Holt* say, there was a burying of the old wife; that it would appear also from the testimony of several other witnesses ready to be called, that several declarations of the father and mother of the said *John Holt* and also of the said *John Holt* himself and his master, the said *Greenhalgh*, were made at different times and at various places to the effect aforesaid; that it would be proved by a witness, that the said *John Holt*, his father and mother, the said *Greenhalgh*, and also the said *Lomax*, were all dead; and that the register of their several and respective burials was ready to be produced and proved; and that all due diligence had been used to find the said indenture, but that it could not be found. The counsel for the respondents also stated, that they had no witnesses to prove the execution of any indenture, or that had ever seen one; or that any indenture ever existed in point of fact, and was lost or destroyed, save but as above stated; but that the whole of the evidence respecting the indenture rested on the declaration and hearsay of persons, who did not pretend to have ever had the indenture in their custody or to have ever seen it. The counsel for the appellants said, they had many witnesses to contradict the facts opened by the respondent's counsel; but the Court of Quarter Session was of opinion, that the above evidence was incompetent and inadmissible; and refused to hear and receive the same. — LORD MANSFIELD: Whether in point of fact an indenture ever existed, is the very question in the cause; it is the whole matter in dispute; and many circumstances are shown, from whence an apprenticeship (which could not be without an indenture) may very reasonably be implied. Declarations of parties to relations are in settlement cases admitted as evidence from necessity; a necessity, which grows out of the very nature of the subject; and the practice, in conformity to this rule, has become so very general, that it ought not to be departed from, until very good reasons (*a*) can be assigned against it. The Sessions have done wrong in refusing to hear the evidence. The declarations of the husband also, with many other incidents raise a strong presumption. It must be sent back for the evidence to be heard, and a conclusion drawn. — BULLER J. No argument has been urged against receiving the declaration of the husband on his death-bed. From the awful situation in which the party then speaks, such testimony is uniformly received in criminal cases; and is consequently admissible here. And there is also other evidence, which has always in these cases been received. — WILLES and ASHHURST

(*a*) For the present state of this question see the case of Rex *v.* Eriswell, *post*, pl. 828. Rex v. Nuneham Courtney, *post*, pl. 829. and Rex *v.* Ferrybridge, *post*, pl. 831.

Js. concurring. — Case sent back to the Sessions to be heard. It never was returned.

826. *Rex* v. *St. Sepulchre*, *T. T.* 25 *G.* 3. *Cald.* 547. — The case stated, that the pauper, *S. Freeth*, was born in the parish of *St. Luke*; and about nineteen years since married her late husband, who died about a year and a half ago; and that some time before his death, her said husband did, in her presence and hearing, inform the secretary of the *Lying-in Hospital*, in the county of *Middlesex*, that he was, before his marriage, a written articled servant for two years to *Spital* in the *Old Bailey*, in the parish of *St Sepulchre*; and that he duly served him in the said parish two years under the said article; and that the said service was completed before his marriage with the said pauper; and that he worked at buckle-cutting and received one guinea *per* week, and lodged and boarded in the house of his master, for which he paid 9*s*. *per* week. That the master, *Spital*, has been dead about twelve years, and that the pauper, *Freeth*, never saw the articles under which her said husband served the said *Spital*; nor were the said articles produced at the hearing of the said appeal; nor was any evidence given of any inquiry after them. — WILLES J. The first question is, whether the declarations of a husband to his wife are after his death admissible? They certainly are not so in general. In questions of custom and prescription, it is true they are, though not to prove particular facts. Yet it is insisted, that the usage of Courts of Quarter Session allows such evidence to be received there; and the only case cited to this point, that of *Rex* v. *St. Michael, Bath*, seems to confirm that proposition. But the case, which has been stated as analogous to the present, and another exception to the rule, does not apply. The declarations of a bankrupt are not admitted to prove the fact of his keeping house or absconding, to prove the act of bankruptcy; but when this fact is proved, are received to show, *quo animo* he did such things. The orders might perhaps be supported on this ground; but it is not necessary to give any express opinion on that head, as the case is so weak on the other point. On the second question, whether when a deed is shown to exist, parole evidence can be given of the subject matter of it, though no inquiry has been made respecting it, I am of opinion it cannot. The parties should have used due diligence to come at the articles, and inquired of the widow or administrator to intitle themselves to do so. What is said by ASTON J. in the case of *St. Michael* in *Bath*, as reported in Mr. *Bott*'s appendix (*a*), seems in point. — ASHHURST J. The gross neglect of the parties, to make the usual and obvious inquiries to intitle them to the advantage of the parole evidence in this case, makes it unnecessary for me, though I should have no difficulty in doing it, to pronounce here upon the admissibility of the husband's declarations. So far from making it the best evidence, and using due diligence, they have done nothing. — BULLER J. The first part of this question appears to me to be perfectly clear, upon the grounds on which it has been put. The instance of a bankrupt's declarations does not apply. He is considered as being criminal; and what he says, at the time he is proved to have committed the act, is evidence against him. As to the second part of the question, there ought, and might have been inquiries made in different places; for there ought to have been two parts of the articles; because each party is bound; but inquiry is made nowhere, not

Declarations of a husband to his wife respecting his settlement, seem, after his death, to be admissible evidence; but if such declarations refer to a written instrument, unless previous inquiry shall have been made after it, they cannot be received in evidence.

(*a*) *Ante*, pl. 601.

even whether the pauper had left any papers; and every inquiry ought to be made. — Rule absolute, and order of Sessions quashed. — LORD MANSFIELD was absent.

It seems that a pauper, who refuses on his examination to answer a proper question, may be committed by the magistrates "until he shall answer." Carth. 153. 291.

827. *Rex* v. *Jackson*, *E. T.* 27 *G.* 3. 1 *T. R.* 653. — On a rule for an information against justices for having committed a pauper to prison "until he should answer," whom they were examining relative to his settlement, for not answering a particular question propounded to him; under which commitment he continued in prison for thirteen days. — ASHHURST J. said, I will not now decide whether magistrates have or have not a power to commit a pauper for refusing to answer proper questions put to him in the course of his examination. They certainly have a right to examine a pauper touching his settlement; and yet that would only be a shadow of a right, unless they had likewise a power of enforcing that examination, by committing the pauper for refusing to be examined. — BULLER J. As to the power of commitment, I do not know how justices are to act, unless they have such a power. This commitment, "until he should answer," I think, is right. And though the pauper continued in prison under the commitment for thirteen days, that will not make the case stronger against the defendants. The party committed for refusing to be examined is to clear himself, and when he will answer, he must give notice to the magistrates. This is like the case of a commitment by the commissioners of a bankrupt, where the party committed must send word when he will submit and answer the questions. — GROSE J. declared himself of the same opinion.

If two justices take the *examination* of a pauper relative to his settlement, but do not remove him, and the pauper afterwards *dies*, or becomes *insane*; *Qu.* Whether two other justices may remove his family on it? See Great Bedwin *v.* Wilcot, *ante*, pl. 813.

828. *Rex* v. *Eriswell*, *T. T.* 30 *G.* 3. 3 *T. R.* 707. — *Sharpe* came into the parish of *I.* in 1767, where he was employed as a day-labourer to work on the navigation. In 1779 he was taken before two justices of the peace for the county, by the overseers of *I.*, for the purpose of being examined as to the place of his last settlement; in consequence of which, *his examination* was taken upon oath before those two justices, and signed by the pauper. No proceedings were had in consequence of this examination until the order of removal was applied for and made. The pauper, from the time of the examination being taken, continued to reside in *I.* for about *five years*, endeavouring to gain his livelihood, and without becoming chargeable to that parish, when he became insane, and continued in a state of insanity to the time of his removal to *E.* This examination was offered in evidence, and received by the Court, the hand-writing of the justices who took the same being first proved. — LORD KENYON C. J. I admit that this man who was proved to be insane is to be considered as to this purpose in the same state as if he were dead: and it has been decided that in such cases the party's hand-writing may be proved as if he were actually dead. Then it is said that there are two grounds on which his examination may be received, as to both of which I agree with my brother GROSE. 1st, As an examination taken upon oath before two justices of the peace who, it is argued, had authority to take it. 2dly, As a declaration of the party examined. I will briefly consider both these positions. The first depends on the stat. 13 & 14 *Car.* 2. That statute empowers the justices to make an order of removal; it does not give them an express power to examine; but, as an examination is necessary to get at the facts upon which the judgment of the magistrates is to proceed, there is an incidental power

given, allowing them to examine when they are called upon to exert their power of removal. But in this case they were not applied to for the purpose of making an order of removal: the overseers called upon them for no other purpose than to examine the pauper; all the proceedings therefore were extrajudicial; and the examination on oath might just as well have been taken before the parish clerk, and would have been as much entitled to credit as this. But I will go further: if this examination had been taken in order to found an order of removal upon it, still I should have been of opinion that it would be no better, as far as respects the present question, than a mere declaration of the party, the effect of which I shall consider presently. Examinations upon oath, except in the excepted cases, are of no avail unless they are made in a cause or proceeding depending between the parties to be affected by them, and where each has an opportunity of cross-examining the witness; otherwise it is *res inter alios acta*, and not to be received. It has been said that this is a *judgment* of the justices, as appears by the 2d section of the 13 & 14 *Car.* 2. which has the word *judgment* in it; and that it is no objection to its being a valid judgment that the parties to be affected were not present. But I think the word *judgment* in the section referred to is only used as equivalent to the word *opinion*. And as to a judgment being binding though the party to be affected was not present, I think it will scarcely be found that that is so, unless in cases where the party has had an opportunity of being present, or was contumacious, neither of which was the case with the parish now to be affected; but as to them it was altogether *res inter alios acta*. It has been said that there are cases where examinations are admitted, namely, before the coroner, and before magistrates in cases of felony. That observation appears to me to go rather in support of the general rule than in destruction of it. Every exception that can be accounted for is so much a confirmation of the rule that it has become a maxim, *exceptio probat regulam*. Those exceptions alluded to are founded on the statutes of *Philip & Mary* (*a*); and that they go no further is abundantly proved. Besides, the examination before the coroner is an inquest of office; it is a transaction of notoriety to which every person has a right of access; and writs of *ad quod damnum* have been frequently set aside for want of this notoriety in the execution of them by the sheriff. But, without stating the cases which occur on this head, I will do little more than refer to the case of *Rex* v. *Paine* in *Salk.* 281. & 5 *Mod.* 163. That was not loosely decided, but was the opinion of this Court assisted by the Court of Common Pleas. In *Salkeld* it is expressly said, that the rule cannot be extended further than the particular case of felony; and in the other book the Chief Justice declared, that the depositions were not evidence; and a weighty reason is given, namely, "the defendant not being present when they were taken before the mayor, and so had lost "the benefit of a cross-examination." This case is adopted in 2 *Hawk. Pl. C. c.* 46. § 1.10. which with the subsequent sections of that chapter are worth consulting. Secondly, considering this as a declaration of the party, I am at a loss to find the grounds on

(*a*) 1 & 2 Ph. & M. c. 13. as to depositions before the coroner; and 1 & 2 Ph. & M. c. 13., and 2 & 3 Ph. & M. c. 10. before justices of the peace in cases of felony, and see 7 G. 4. c. 64.

which it can be received. I admit that declarations of the members of a family, and perhaps of others living in habits of intimacy with them, are received in evidence as to *pedigrees;* but evidence of what a mere stranger has said has ever been rejected in such cases. That however has been always understood to be an excepted case, and to stand on reasons peculiar to itself, which I need not take up time by stating. If the exception go further, I should have wished to have heard it stated and defined; for unless that is done I am much afraid we may endanger a rule of infinite importance to every individual, and by suffering exceptions to creep on one after another, leave nothing like a rule. It has been said that in the case of *The Bishop of Meath* v. *Lord Belfield* (*b*), in a *quare impedit*, the plaintiff gave in evidence an entry in the register of the diocese of the institution of one *Knight*, in which there was a blank in the place where the patron's name is usually inserted; upon which parol evidence of the general reputation of the country that *Knight* was in by the presentation of one under whom Lord *Belfield* claimed was offered; and that upon a bill of exceptions it was held, that the evidence was admissible; that it was said that a presentation may be by parol, and what commences by parol may be transmitted to posterity by parol. I have not seen the report of that case: but this I admit, that a presentation may be by parol, and that may be proved by parol, that is, by a witness who was present and heard it; but that common reputation might be given in evidence I must deny: if it could, why might not such evidence decide upon titles to estates, at least before the statute of frauds, when no written instrument was required to make good a feoffment of the greatest landed property in the kingdom. In short, it being admitted that the rule for which I contend is undoubtedly the general rule, the evidence offered in this case must be rejected, unless an exception in favour of it has been adopted in such a manner as to incorporate it into the law of evidence. For where is the line to be drawn? If the Court admit such an examination to be evidence against a class of persons who are strangers to it, how shall we stop short, and say, that it shall not be evidence against any other? I cannot say how far such an idea might go. This brings me to the cases cited, and to the supposed usage. And, as to the first, there is no one case in which the point has been decided. In *Rex* v. *Nutley*, (*b*), the whole of the wife's evidence was disregarded, whereas a fair inference might be drawn to prove her husband's settlement, from the facts which she swore to within her own knowledge; for every hiring is presumed to be for a year, unless something is stated to prevent that inference; and therefore the Court quashed the order of Sessions on that ground. As to the case of *Greenwich* (*c*), the Sessions the second time found the *actual fact of the service* for 40 days in the parish. Then as to the case of *St. Sepulchre* (*d*), the only point there determined by the Court was, that they could not receive parol evidence of an indenture not proved to be lost. And in that of *The Holy Trinity*, in *Wareham* (*e*), enough appeared from the facts, which the wife spoke to from her own knowledge, to lead the Court to support the conclusion which the Sessions had drawn. There is therefore no case in which this point was the very hinge on which it turned. But even if there had, as it would have stood single in opposition to a series of cases, I should not have placed much reliance on the superstructure when

(*a*) 1 Wils. 215.

(*b*) *Ante*, pl. 480.

(*c*) *Ante*, 398.

(*d*) *Ante*, 482.

(*e*) *Ante*, pl. 481.

the foundation failed. But the observations I have made upon the cases alluded to I think warrant me in saying, that though there were some expressions tending to show that such evidence might be received, yet it was not the *ground of decision* in any of them; they amounted only to *obiter dicta;* or even let them be called *solemniter dicta;* and at least they seemed to have proceeded on a supposed general usage at the Quarter Sessions. Upon the whole I am most clearly of opinion, that this examination was not admissible in evidence. It was *ex parte*, obtained at the instance of those overseers whose parish was to be benefited by it, and behind the backs of the parish against whom it has now been used, without having an opportunity of knowing what was going on, or attending to have the benefit of a cross-examination (*a*).

An ex parte examination in writing of a pauper, taken on oath before two magistrates, for the purpose of removing him to the place of his settlement, is not admissible in evidence upon an appeal against an order of removal, on the ground of the pauper's having absconded between the notice of appeal and the trial of it before the Quarter Sessions; although the respondents had used due diligence, but without effect, to procure the attendance of the pauper as a witness, he not having been heard of from the time of his absconding.

829. *Rex* v. *Nuneham Courtney*, *E. T.* 41 *G.* 3. 1 *East*, 373. — Two justices, by an order made on the 4th of *June* 1799, removed *Jennings* and *Elizabeth* his wife from *B.* to *N.* The Sessions on appeal confirmed the order, and stated specially for the opinion of this Court, that the pauper *F. J.* was about 19 years old, and was married to the said *Elizabeth* in the year 1799, before the date of the said order; and that between the notice of appeal against the order and the then next Sessions the pauper absconded, leaving his wife, and has not since been heard of. And that the officers of *B.* have used all due diligence to find him, in order to have him examined as a witness at the hearing of the appeal, but without success. That the pauper was employed in the service of *C.* in *N.* as a boy to drive his team during the period of 11 months, between *Michaelmas* 1794 and *Michaelmas* 1795: and in order to prove that the pauper was legally settled in *N.*, the respondent parish of *B.* offered in evidence an examination in writing of the pauper, which examination was first taken upon the oath of the pauper on the 4th of *June* 1799 by one magistrate, upon the complaint of the churchwardens and overseers of the poor of *B.*, and which examination was on the day of the date of the said order read over to the pauper by the same and another magistrate, before whom the pauper was then taken by the churchwardens and overseers of *B.*, in order to be removed to the place of his settlement; and to the truth of the contents of which examination the pauper then made oath before the justices, who thereupon made the said order. But it appeared, that no person belonging to *N.* was present at either of the before-mentioned times; whereupon the appellants objected to the admissibility of this examination in evidence. But the Court of Quarter Sessions over-ruled the objection, and received the examination in evidence; by which it appeared that the pauper, after stating the place of his birth, which was in *S.*, deposed, that he hired himself at *A.* fair some days before *Michaelmas* 1794, as a servant to the said *C.*, farmer in *N.*, for a year, to lodge in his house, and to be paid 3*s.* and 6*d.* *per* week for the first half of that year, and 4*s.* *per* week for the second part, and to be found in victuals

(*a*) The Court were equally divided in their opinion of this point; Lord *Kenyon* and Mr. Justice *Grose* being against the admissibility of this examination in evidence, and Mr. Justice *Ashhurst* and Mr. Justice *Buller* in favour of it; but as the arguments and opinions of the two former Judges have been adopted in subsequent cases, it was thought right to insert their arguments in this edition.

for five weeks in the harvest; and that he served that year, and received his wages accordingly. He then stated several other hirings and services to persons in other parishes, none of which was for a year, and concluded by saying he had done no other act to gain a settlement. And the court thinking this examination to be sufficient proof of the pauper's settlement in *N.*, did for that reason confirm the order. This case first came on to be argued in last term, when the Court without hesitation expressed a decided opinion against the admissibility of the evidence. But it stood over by desire of the respondents' counsel. — And now ERSKINE for the respondents, in answer to a question put to him by the Court, admitted that he had no argument to adduce by which he could expect to alter the opinion which the Court had before intimated. — PER CURIAM: Both orders quashed (*a*).

Where a case from the Sessions only stated the bare fact of a pauper's having received relief from the respondent's parish, it was holden that this was not even prima facie evidence of a settlement there, since he might have been relieved as casual poor, which the overseers were bound to do if wanted, whether the pauper were settled there or not. Hearsay evidence of a fact is not to be received upon a question of settlement though the party who gave the information respecting her own settlement were dead.

(*b*) See Rex *v.* Chatham, *post*, pl. 833.

(*c*) Rex *v.* Collingwood, 2 Ld. Raym. 1117.

830. *Rex* v. *Chadderton*, (*b*) *M. T.* 42 *G.* 3. 2 *East*, 27. — Two justices, by an order, removed *J. B.*, his wife, and five children by name, from *Bolton* to *Chadderton*. The sessions, on appeal, confirmed the order, subject to the opinion of this Court on the following case: The respondents proved that the pauper *J. B.*, when he buried his first wife, applied to and received relief from the overseers of *Chadderton;* and that the pauper's mother, being with child of a bastard some few years after his father's death, went from another township to *Chadderton* to lie in there, and "as the pauper had heard from his mother," who has been dead some years, she was relieved there by *Chadderton*. This hearsay evidence was objected to by the counsel for *Chadderton;* but it was received: and the removants did not give any other evidence of a settlement in *Chadderton*. The Sessions, conceiving the above sufficient evidence of a settlement in *Chadderton*, directed the appellants to go into their case; and the appellants proved that when the pauper was about 12 years of age, his mother and stepfather made a verbal agreement with *Platt* of *Bolton*, that the pauper, who was then able to weave a little, should weave for him three years. The stepfather and mother were to have half the earnings of his weaving, and *Platt* the other half. *Platt* was to learn him to weave and find him looms, but the stepfather and mother were to find him in every thing else. He served out the three years with *Platt*, during which time he slept in *Bolton*. The *Sundays* he passed with his mother, and the rest of his time at *Platt's*; but this was not mentioned in the agreement. — When this case was called on in the paper for argument, LORD KENYON C. J. said, that whatever doubt might be raised as to the settlement in *Bolton*, concerning which he thought the Sessions should have found the fact one way or the other, whether the pauper contracted to serve as an apprentice, or only as a hired servant, in the former of which cases no settlement could be gained, as the binding was not by deed, which Lord *Holt* says (*c*) is necessary in the case of an apprentice; yet at any rate the orders could not be supported, there being no evidence of any settlement in *Chadderton*, to which the removal was made; the

(*a*) In the case of Rex *v.* Eriswell, *ante*, pl. 828. where the court were equally divided upon the admissibility in evidence of such an ex parte examination, the affirmative opinion was grounded on a presumption that the pauper was dead, or, what was admitted to be equivalent, was insane.

bare fact of the paupers' having been relieved there being no proof of it, as they might have been relieved as casual poor.—HOLROYD and CROSS, in support of the orders, observed, that the fact of the paupers' having received relief from the overseers of *Chadderton* was at least *primâ facie* evidence of their being there settled, so as to call upon them to account for it by showing that such relief was given to the paupers as casual poor, or under a misapprehension of their being settled there; nothing of which was stated in the case: and therefore the fact must be taken as equivalent to an acknowledgment by *Chadderton* that the paupers were their parishioners at the time.—LORD KENYON C. J. The hearsay from the pauper's mother is no evidence at all of any fact (*a*); and then the only fact applicable to the settlement in *Chadderton* is, that when the pauper buried his first wife he received relief there from the overseers: but the bare fact of his receiving such relief is no evidence of a settlement, for the reason I before gave. If the paupers were in want of relief while they were in *Chadderton*, the overseers were bound to give it, whether the paupers were settled there or elsewhere. And by the late act of parliament (*b*) they could not have been removed till they were actually chargeable.—The respondents' counsel then desired that the case might be sent back to the Sessions to be reheard, as there was other evidence of the settlement in *Chadderton;* and the subsequent settlement was what was understood to be principally contested.—TOPPING, *contrà*, said, that both the settlements were contested; and the respondents ought to have come prepared with all their evidence on the trial of the appeal. But LORD KENYON, C. J. said, that as the respondents might have given other evidence of the settlement in *Chadderton*, if the Sessions had not been satisfied with this, there seemed no impropriety in sending the case back to be reheard: and he would recommend to the magistrates to determine the fact in what character the pauper contracted to serve his master, which would decide the principal question one way or other, and make it unnecessary to send the case back again for the opinion of this court.—PER CURIAM: The case remitted to the Sessions.

(*a*) Vide *post*, Rex *v.* Ferrybridge and Rex *v.* Abergewilly, *post*, pl. 831, 832.

(*b*) 35 G. 3. c. 101.

831. *Rex* v. *Ferrybridge, M. T.* 42 *G.* 3. 2 *East*, 54.—Two justices removed *Catherine Hill*, the wife of *John Hill* deceased, and her four children by name, from *Leeds* to *Ferry Frystone*. The Sessions on appeal confirmed the order, subject, &c. That upon hearing of the appeal the respondents in support of the order of removal produced the pauper *Catherine Hill* as a witness; who deposed, "that she was the widow of *John Hill*, and that she had heard "the said *J. Hill* in his life-time say, that his settlement was at "*Ferrybridge*, which he said he gained by hiring with and serving "one *Hawkshead*, a bricklayer in *Ferrybridge*, for a year." The respondents then gave in evidence the examination, of which the following is a copy: "East Riding of the county of *York*.—The examination of *John Hill*, late in the royal artillery, now residing at *K.*, taken upon oath this 15th day of *April* 1788; who saith, that his legal settlement is at *Ferrybridge;* that he acquired the same by servitude, namely, by being hired for one whole year, and serving the said year with *J. H.*, bricklayer of *Ferrybridge;* and that he hath not gained any legal settlement elsewhere since to the best of his knowledge and belief." (Signed and attested.)

Neither the hearsay of a pauper who is dead, nor his ex parte examination in writing, taken on oath before two magistrates, touching his settlement, are admissible evidence of such settlement.

No proceedings were had in consequence of this examination until the order of removal, which is the subject of this appeal, was applied for and made. The respondents did not offer any other evidence than what is above stated in support of the order of removal: upon which the counsel for the appellants objected both to the admissibility of the testimony of the said *Catherine Hill* so given by her as aforesaid, and also of the said examination is evidence. The Sessions, however, thinking the evidence above stated to be sufficient proof of the pauper's settlement in *Ferrybridge*, confirmed the order, subject to the opinion of this Court. It was afterwards certified, that *Ferry Frystone* and *Ferrybridge* are one and the same township. — TOPPING, in support of the order of Sessions, (after an ineffectual application to have the case sent down to be reheard by the Sessions,) said, that they could not add any thing to the argument of Mr. Justice BULLER in the case of *Rex* v. *Eriswell* (*a*), in support of the admissibility of the evidence. — LORD KENYON C. J The point upon which the Court were divided in opinion, in the case of *Rex* v. *Eriswell*, has been since considered to be so clear against the admissibility of the evidence, either as to the hearsay of the pauper or his examination in writing, that it was abandoned by the counsel at the bar in the case of *Rex v. Nuneham Courtney* (*b*) without argument. It is true, there was no evidence there that the pauper, whose examination had been admitted in evidence, was dead: but our opinion against the general doctrine laid down by the two judges who supported the reception of the evidence in the former case was pretty broadly hinted. And to be sure that point may now be considered to be at rest. — PER CURIAM: Both orders quashed. (*c*)

(*a*) *Ante*, pl. 828.

(*b*) *Ante*, pl. 829.

An ex parte examination in writing of a pauper touching his settlement cannot be received in evidence of such settlement though he be dead.

832. *Rex* v. *Abergwilly*, *M. T.* 42 *G.* 3. 2 *East*, 63. — Two justices removed *Ann*, the widow of *Benjamin Jones*, deceased, and her children by name, from *N.* to *A.* The Sessions, on appeal, confirmed the order, subject to the opinion of this Court on a case; setting forth in the first place the examination of *Ann Jones*, taken before two magistrates, upon which the order of removal was founded; in which examination it was stated, "that her husband "informed her after their marriage, that his last legal settlement "was then in the parish of *A.*, by hiring and service by the year "to one *J. H.* there," (which was the only matter touching the settlement in *A.*) The case then stated, that upon the trial of the appeal, the pauper, *Ann Jones*, upon her examination in court, denied having ever heard her husband say where he was a parishioner; upon which the Court resorted to a written examination of the husband's, taken before two magistrates, soon after his marriage, but which, in the opinion of the Court, was never acted upon in any manner until the hearing of the appeal. In that examination (which was set forth verbatim in the case) the husband swore to a settlement in *A.*, by hiring for a year, and service there for a much longer period, with *J. H.*; and that he had done no other act to gain a settlement elsewhere. It was contended on the part of the appellants, that the Court ought not to have resorted to the examination either of the husband, who was dead, or of the pauper herself. — ABBOTT, who was to have argued in

(*c*) Vide Rex v. Chadderton, *ante*, pl. 830. and Rex v. Abergwilly, *infra*.

support of the order of Sessions, admitted that it could not be supported after the recent determination of the Court (*a*) against the admissibility of that species of evidence upon which the Court had formerly been divided in opinion in the case of *Rex* v. *Eriswell* (*b*): and against the reception of which evidence the present judges of the Court had intimated a strong opinion in *Rex* v. *Nuneham Courtney*. (*c*) — THE COURT assenting, the rule was made absolute for quashing both orders.

(*a*) In Rex v. Ferrybridge, *ante*, pl. 831.

(*b*) *Ante*, pl. 828.

(*c*) *Ante*, pl. 829.

Giving parish relief to a pauper within the parish is no evidence of his settlement there.

833. *Rex* v. *Chatham*, *T. T.* 47 *G.* 3. 8 *East*, 498. — The husband of the pauper went after his marriage to live in *C.*, and resided there until his death. The pauper did not know whether her husband had acquired any settlement in *C.*, or any where else, nor where her own settlement was, but knew that her husband more than once received relief from *C.*: that he was at one time a fortnight, at another a longer period, in the workhouse there on account of illness; and that he died in the said workhouse, and was buried at the expence of the parish; and, that during all the times he was so relieved, he was resident in *C.* The Sessions thought this sufficient evidence of the husband being a settled inhabitant of *C.*, and confirmed the order. The case of *Rex* v. *Chadderton* (*d*), was cited. — LORD ELLENBOROUGH C. J. On subjects of this sort it is important that there should be one uniform rule, as far as is consistent with law; and the rule having been laid down by *Lord Kenyon* in *Rex* v. *Chadderton*, that the bare fact of giving relief to a pauper within the parish was no evidence of his settlement there, because it might be given to him as casual poor, it is proper to abide by it. In that case, indeed, the relief was only administered once; and it becomes necessary to consider whether its having been administered more than once, or several times, alters the case, and differs this in substance from the other; for each instance itself might not be evidence of the settlement; and yet it might be difficult to say, that several instances might not furnish the conclusion. At the same time, however, it is to be observed, that though the relief were given for any length of time, the inference may either be that the party receiving it, was a settled inhabitant, or that his settlement could not be known. But that would bring it to an alternative case, on which the Sessions might draw their own conclusion, and the difficulty would still exist. Upon the whole therefore it appears to me, as the better rule to adopt, that it does not amount to evidence of the settlement. And there would be great impolicy in admitting it to have any weight; for if the parish officers, by giving relief to a pauper, were to be making evidence against themselves, as to his settlement in their parish, it would make them perform their duty to casual poor with great reluctance. And, therefore, it is more consonant to humanity and policy, and to the rule of law laid down by Lord *Kenyon*, to say at once that it is no evidence of the settlement, than to leave it as a matter of inference in each case. The other judges concurring. — Order of Sessions quashed.

(*d*) *Ante*, pl. 830.

VI. *The Adjudication.*

An adjudication of *last settlement* is tantamount to place

834. *Trowbridge* v. *Weston*, *M. T.* 8 *Will.* 3. 2 *Salk.* 473. — It was moved to quash an order of two justices, which recited, "Whereas *B.* is, as we are credibly informed, the place of his "legal settlement," not averring that it was the place of his last

of last legal settlement.

legal settlement, as it ought; for that the statute says, the poor person shall be removed to the place where he was last legally settled: — and it was quashed (*a*).

In an order of removal it is not sufficient that the place of his last legal settlement appears in *the complaint*; it must also appear in the *adjudication* of the justices.

835. *Bury* v. *Arundel*, *E. T.* 9 *W.* 3. 2 *Salk.* 479. — "Whereas "complaint has been made to us, that *Duckin*, with his wife and "children, came from his place of abode and last legal settlement "in *B.* to *A.*, we therefore require you," &c. — Naught; for there is no adjudication of the justices which was his last legal settlement, but only a complaint that *B.* was, which doth not appear, whether true or false.

An order of removal, stating that it appears, on the oath of A. B. that the pauper was last legally settled at C. is no adjudication.

836. *Rex* v. *Hackney*, *T. T.* 9 *W.* 3. *Salk.* 478. — "Whereas "complaint has been made to us, that *Elizabeth F.*, wife of *Uriel* "*F.*, is lately come into the parish of *St. G.*, and is likely to "become chargeable to the same; and whereas, on oath made by "the said *Elizabeth F.*, it appears that her husband was last le-"gally settled at *H.*; these are therefore," &c. — Quashed; because there is no judgment of the justices concerning the last legal settlement, but only the oath of the woman.

An order removing a man *and his family*, is bad as to his family. — See Beaton *v.* Siston, Stra. 114. and Flixton *v.* Royston, 1 Sess. Cas. 11. Foley, 278.

837. *Rex* v. *Johnson*, *H. T.* 10 *W.* 3. 2 *Salk.* 485. — The justices on complaint that *Johnson* was come into the parish of *B.*, and likely to become chargeable to the parish, adjudged *S.* to be his last legal settlement, and ordered that he and his wife and family should be removed to *S.*: — But the order was quashed, because *non constat* what is meant by "his family," and some of them might have a settlement at *B.*, though *J.* had not.

An order of removal must *adjudge* that the persons removed were *likely to become chargeable*: for stating him as *complained* of by the officers as likely to become chargeable is not sufficient. See the case of Darnel *v.* Cheshire, E. T. 2 Ann.

838. *Suddlecomb* v. *Burwash*, *T. T.* 13 *W.* 3. 2 *Salk.* 491. — Exception was taken to an order of two justices, because it was *only* said to be complained by the churchwardens, that the person removed was likely to become chargeable, but not adjudged so by the justices. — HOLT C. J. said, that the justices cannot remove a man unless he be likely to become chargeable, for otherwise they might remove a man of an estate. And he took a diversity, that where the order is, "Whereas it appears to us, &c. on the "complaint, &c. that *J. S.* is likely to become chargeable to the "parish," that will be well enough; but where it is, as here, "Whereas complaint has been made," &c. that is ill.

An order removing a certificate person must *adjudge* that he was actually become chargeable.

839. *Malden* v. *Fletwick*, *T. T.* 2 *Ann.* 2 *Salk.* 530. — An order was made, reciting that "Whereas complaint has been made "unto us by the, &c. that *J. S.* who is lately come into the parish "of, &c. with a certificate, according to 8 & 9 *W.* 3., is actually "chargeable to the parish:" — and quashed; for the justices must adjudge him to be chargeable, or at least must say it appeared to them that he was so; but the justices need not adjuge the place that gives the certificate to be the place of his last legal settlement.

A *conditional* order is bad, for it being an adjudication, it must be absolute.

840. *Oakham* v. *Whittlesea*, *E. T.* 7 *Ann.* 11 *Mod.* 171. — An order was made by two justices to remove a poor man "except "he find security to be allowed by them." It was moved that this order should be quashed for this reason, and also because it did not say that he was likely to become chargeable. — HOLT C. J.

(*d*) Mich. 3 Ann. B. R. it was held, that legal settlement and last legal settlement are the same thing, because by every new settlement the precedent settlement is discharged.

The justices cannot make a conditional order, "or that in case "he do not find security there to remove him;" for an order of removal is an adjudication, and ought to be absolute: they have nothing to do with the security; yea, that belongs to the parish, and is not to be allowed or disallowed at the discretion of the justices.

841. *Rex* v. *Newton*, *H. T.* 9 *Ann.* 1 *Sess. Cas.* 161.—On showing cause why an order for removing a certificate-man should not be quashed because the certificate was not said to be allowed by two justices, it was insisted that the justices had adjudged *N.* to be his last legal settlement, which was sufficient, and that the certificate shall be presumed a good one, as in the case of wages intended in husbandry. The case of *Horncastle* v. *Boston*, was cited on the other side, where two justices were witnesses to a certificate, and the Court held it no good certificate, for justices ought to allow, and being only witnesses was not a mark of their approbation. — PROBYN J. The order is good, for it sets out that the pauper came by certificate, and the justices adjudge that he was actually chargeable, and that *N.* was the place of his last legal settlement, he having gained no settlement elsewhere since; which sets out the whole reason of their judgment, and would make the settlement good if there had been no certificate; therefore the order of removal must be confirmed.

An order removing a *certificate-person*, stating that he was become chargeable, and *adjudging* the place to which he is removed to be the place of his settlement, is good, although it do not state that the certificate was allowed.

842. *Rex* v. *Middleham*, *M. T.* 9 *Ann. Foley*, 271. — It was moved to quash an order of justices which was for the removal of a poor person from the parish of *A.* to *M.* The exception to the order was, because the justices set forth that *M.* was the last legal settlement of the father; therefore they send the son there; and it appeared that he was 10 years of age. — PARKER C. J. The justices have made no adjudication what place was the place of the child's legal settlement; they only say that *M.* was the place where his father was last legally settled, and therefore they do remove him thither; they have left us to judge where he was last legally settled; and this is in the nature of a judgment, and ought to be more certain. — ET PER TOTAM CURIAM, the order was quashed, because the settlement of the father is not absolutely necessary to the settlement of the son.

An order of removal, without an adjudication that the place of the removal was the place of last legal settlement, is bad.

843. *Anonymous*, *T. T.* 10 *Ann. Sett. & Rem.* 39. — An order of removal stated, "Whereas *M. W.*, with her six children, has in- "truded, and will become chargeable if permitted to abide." — BRANTHWAIT. This is uncertain: it may be five or ten years hence. — THE COURT directed the order to be quashed.

An order stating that the person removed "*will* become chargeable if permitted to abide," is bad.

844. *Rex* v. *Waltham Magna*, *E. T.* 10 *Ann. Sett. & Rem.* 38.— The order adjudged, that the pauper "is likely to become charge- "able, as we are credibly informed." — PARKER C. J. It is the belief of another: this is no adjudication.

An order of removal adjudging that the person removed is likely to become chargeable, *as we are informed*, is bad. See S. P. Salk. 473.

845. *Rex* v. *Rockvill*, *H. T.* 12 *Ann. Sett. & Rem.* 21. — The order stated, that "Whereas it appears to us, upon the oath of "*Eleanor J.*, relict of *Edward J.*, that she, and her daughter "*M.*, were last legally settled in *R.*, who are likely to become "chargeable." — It was moved to quash the order, for that the words "likely to become chargeable," do not amount to an adjudication. — THE COURT: The words "who are likely to become

In an order of removal the words "who are likely to become chargeable," are a good *adjudication*.

" chargeable" are always the words of the justices; if it had been, that " they are likely to become chargeable," then it had been a recital only, and the words of the overseers.

An adjudication that the pauper was settled at a certain place *according to their knowledge*, is bad.

846. *Rex* v. *St. Mary Ottery, M. T.* 12 *Ann. Sett. & Rem.* 32.— Two justices sent a person from *St. Mary O.* to *St. Mary* in *B.*, adjudging in the order that he was last legally settled there, *according to their knowledge.* — It was objected, that they should have said that he was last settled there. — THE COURT: An order of removal is a judgment which must be certain and positive; the pauper might have been settled elsewhere, and the justices not know it. The order was quashed.

An order of removal stating the place of a man's settlement, and therefore removing his widow there, without *adjudging* it to be the place of his settlement, is bad.

847. *Egburn* v. *Hartly-wintly, T. T.* 12 *Ann.* 1 *Sess. Cas.* 45. — An order adjudged that *J. S.* was settled at *B.* and therefore the justices removed his widow and children to *B.* — THE COURT quashed the order; for the wife may get a settlement after the death of her husband.

An order of removal, stating, that "on examination we do believe the same to be true," is bad.

848. *Stallingburgh* v. *Haxhay, T. T.* 4 *G.* 1. 1 *Sess. Cas.* 131.— HAWKINS objected to an order of removal, because there was no adjudication; it only said, that " WE, on examination, *do believe* " the same to be true;" and a man may believe a thing on uncertain evidence; but if it had been, " it doth appear to us," &c. it had been well enough. — THE COURT held the objection fatal, and the order was quashed.

The justices must *adjudge* the place to which a pauper is removed to be the place of his last legal settlement.

849. *Rex* v. *Westwood, H. T.* 4 *G.* 1. *Str.* 78. — In an order of removal the complaint was recited to be to one justice only, but the ordering part is by two justices; and this was held good. — Then exception was taken, that there was no adjudication of the place to which he was removed being his last legal settlement, but only " *We order him to be removed to A. as the place of his* " *last legal settlement.*" And for this fault the order was quashed.

An order stating that the person removed *may* become chargeable, is bad. S. C. 1 Sess. Cas. 117. Salk. 491. 2 Mod. Ca. 151.

850. *Teelby* v. *Willerton, H. T.* 4 *G.* 1. *Str.* 77. — In an order the justices ADJUDGED that a person *may* become chargeable. — ET PER CURIAM: This is not sufficient, for the statute only enables the justices to remove persons likely to become chargeable, for a man of the greatest estate may possibly one time or other become chargeable, though it is very unlikely: and is such a person removeable? There is as much difference in this case between *may* and *likely*, as between a possibility and a probability.

An order removing a man, his wife, and child, stating that the man only was likely to become, chargeable, is good as to the wife and child.

851. *Hobey* v. *Kingsbury, T. T.* 8 *G.* 1. *Str.* 527. — Two justices adjudging the settlement of the husband to be at *K.*, and that he is likely to become chargeable to *H.*, send him, his wife, and son of one year old, to *K.*: and, Whether this was good as to the wife and child? was the question. — And held well enough; and the order was confirmed.

An order of removal *adjudging* the last legal place of settlement to be at A. is bad. See Burr. S. C. 88.

852. *Rex* v. *Warnhill, T. T.* 3 & 4 *G.* 2. 2 *Sess. Cas.* 91. — Two justices made an order to remove *J. H.* and two children from the parish of *T.* to *W.*, in these words: " It appeared to us that *J. H.* " was an hired servant, and served in the parish of *W.* according " to the statute in that case made and provided, which we ad- " judge to be true; and we do also adjudge, that the last legal " place of the said *J. H.* is at *W.*" This order was removed to be quashed on this exception, because there is no adjudication in

it that the last legal settlement of the person removed was at *W.*, the word *settlement* being left out. — MARSH attempted to support the order, that the words *last legal place* in the adjudication were sufficient of themselves, without inserting the word *settlement*. — BY THE COURT: Here is no adjudication of a settlement, and these orders are never to be made good by implication. — Order quashed.

853. *Ufculm* v. *Clisthydon*, *M. T.* 13 *G.* 2. *Burr. S. C.* 138. — It was moved to quash an order of removal of *R. M.*, *J.* his wife, and *J.*, *R.*, and *H.* their children, from *C.* to *U.* He objected to the original order, because it is said that the paupers are likely to become chargeable, but not to what parish. — ABNEY. The adjudication is in this form: "And whereas, "upon due examination and inquiry made into the premises, "it appears to us, and we accordingly adjudge, that the said, "&c. are likely to become chargeable." It is not necessary to add to what parish, because it is an order made upon the complaint of the churchwardens and overseers of *C.*, that they were become chargeable to *that* parish. — HOLLINGS replied, that the justices cannot remove persons, unless they are likely to become chargeable *to the parish* from whence they remove them: as in the case of *Saddlecomb* v. *Burwash*. (*b*) Here they do not adjudge that they are likely to become chargeable to the parish of *C.*, nor do they even adjudge the complaint to be true. — LEE C. J. The objection is, that a complaint must show that the paupers are likely to become chargeable *to the parish* from whence they are removed; and that there must be an adjudication of the truth of it. The justices have no authority without such complaint, and must likewise make an adjudication of the truth of it. We cannot support an order by implication. There is no necessity indeed for any particular form of words, but there must be an adjudication of it in some words or other. Now here is no adjudication of it at all; therefore the order must be quashed.

In an order of removal there must be both a complaint and an adjudication of the paupers being likely to become chargeable *to the parish complaining*. (*a*)

(*b*) *Ante*, pl. 838.

854. *Rex* v. *Honiton*, *E. T.* 10 *G.* 3. *MSS.* — "Whereas com- "plaint has been made by you the churchwardens and overseers "of the poor of the parish of *H.*, and to us whose hands and "seals are hereunto set, two of His Majesty's justices, &c. that "*C. D.*, &c. have lately intruded themselves into the said "parish of *H.*, there to inhabit as parishioners, contrary to the "law relating to the settlement of the poor, and have become "chargeable there: and whereas, upon due examination and "inquiry made into the premises by us the said justices, it ap- "pears unto us, and we accordingly adjudge that the said *C.* "*D.*, &c. have to the said parish of *H.* become chargeable, and "that their last legal place of settlement is in," &c. Motion to quash the above order, because it stated that the pauper and his family have become chargeable, not that they have been, or that they are, or are likely to be so. — But THE COURT was of opinion, that "have become chargeable" must mean that they are become

An adjudication that the paupers *have* become chargeable imports that they *are* so. S. C. Burr. Sett. Cas. 680.

(*a*) Same point adjudged in Rex v. Bradford, Sett. & Rem. 40., in St. Nicholas v. St. Peter's, 2 Sess. Cas. 73., in Rex v. Minchinhampton, 2 Sess. Cas. 92, in Rex v. Spalding, Burr. S. C. 43. and in Rex v. Netherton, Burr. S. C. 139. — But see Rex v. Whitham, 1 Str. 142. and Maidstone v. Dothing, 1 Str. 393. and Rex v. Leefield, 1 Str. 698. *contra*.

chargeable, and that the order was sufficient; and therefore discharged the rule for quashing it.

An adjudication on the removal of A, *the wife of* B, that she is settled at C, the place of her *maiden settlement*, is good.

855. *Rex* v. *Riton*, *H. T.* 18 *G.* 3. *Cald.* 39. — The order stated, that "upon complaint, &c. that *S. K.*, the wife of *B. K.*, a "soldier in His Majesty's regiment of foot, now in *America*, and "*H.* their daughter, aged about 23 weeks, have come to inhabit, "&c. we do adjudge that the lawful settlement of them the said "*S. K.* and her said child is in the township of *R.*; we do there-"fore," &c. The Sessions, on appeal, and hearing evidence, confirmed the order. — DAVENPORT, in support of a rule to quash these orders, insisted, that the order only set forth the settlement of the wife before marriage, but, though the pauper was removed *eo nomine* as a married woman, did not state whether her husband had gained a settlement, or that such settlement could not be found, or even that he had been capable of gaining a settlement, or that he was dead. — LORD MANSFIELD. The Sessions say, that the evidence laid before them proved that which would make the order of the two justices right.

An order of justices removing nurse children to their *derivative settlement*, (without taking notice of the death, or adjudging the place to which they are removed,) the settlement of their parents, is good.

856. *Rex* v. *Bucklebury*, *E. T.* 26 *G.* 3. 1 *T. R.* 164. — Two justices removed the paupers from *B.* to *C.* by the following order: "*Berks, to wit.* To the churchwardens and overseers of the poor "of the parish of *B.*, and to the churchwardens and overseers of "the poor of the parish of *C.*, and to each and every of them. "Upon the complaint of the churchwardens and overseers of the "poor of the parish of *B.*, unto us whose names are hereunto set "and seals affixed, being two of His Majesty's justices, &c. that "*E. K.* about five years of age, *J. K.* about two years and a half "old, and *S. K.* about one year and a half old, have lately come "to inhabit in the said parish of *B.*, not having gained a legal set-"tlement there, nor produced any certificate owning them to be "settled elsewhere; and that the said *E. K.*, *J. K.*, and *S. K.* are "likely to be chargeable to the said parish of *B.*; we, the said "justices, upon due proof made thereof, as well upon the examin-"ation of *E. K.*, their grandmother, upon oath as otherwise, and "likewise upon due consideration had of the premises, do adjudge "the same to be true. And we do likewise adjudge, that the "lawful settlement of them, the said *E. K.*, *J. K.*, and *S. K.*, is in "the said parish of *C.*" The order then proceeded in the usual way. — WILSON, to quash this order, contended, that the order of the justices was informal on the face of it. It appears that the paupers were nurse-children; and, as such, they ought not to have been removed without their father and mother, unless the order had stated that the parents were dead. Otherwise the children might be settled in a different parish from their parents, because the father may have gained a subsequent settlement, which he could not communicate to them if this order had been unappealed from. It should have stated, that *C.* was the last legal settlement of the father, and by consequence the settlement of the children. Besides, there could be no evidence to prove that they were settled at *C.* but that which would have proved that they gained such settlement there in right of the father. — But the order was confirmed.

An order for the removal of a *married woman*

857. *Rex* v. *Ysputty*, *E. T.* 55 *G.* 3. 4 *M.* & *S.* 52. — Removal from *L.* to *U.* Order confirmed, subject, &c. — The pauper *Anne* is the wife of *G. W.* a soldier at *Woolwich*. His mother

proved that he gained a settlement about 11 years ago in *U.*, by hiring and service, and that he had not to her knowledge gained a settlement elsewhere; but no attested copy was produced of the husband's examination upon oath, pursuant to the statute 54 *G.* 3. *c.* 25. § 69., or any other statute. The case set forth the order of removal, which was for the removal of *Anne W.* (*not stating her to be the wife of any one*), and *Jane*, her daughter, aged three years, adjudging that the lawful settlement of the said *Anne* and her child (not that the settlement of her husband) was in *U.* — LORD ELLENBOROUGH C. J. If the respondent parish prove enough to launch a *primâ facie* case of settlement, is it necessary that they should prove more? Must they go on to call witnesses at the hazard of having that which is already proved defeated? As to the objection upon the form of the order, it is stated that it is the wife's settlement, and the medium through which she became settled there need not be stated. — Order of Sessions confirmed.

(not stating her to be such) and her children to Y., adjudging that the lawful settlement of her and her children is in Y., was held well, without adjudging that Y. was her husband's settlement; and proof by the mother of the husband that he gained a settlement in Y. by hiring and service was in this country.

held sufficient without calling the husband; although it appeared that he was

858. *Rex* v. *South Lynn*, *M. T.* 56 *G.* 3. 4 *M. & S.* 354. — Removal from *St. M.* to *S. L.* Order confirmed, subject, &c. — The order of removal was founded upon the examination of the pauper, taken in writing before one of the said justices, and reported to the other, pursuant to stat. 49 *G.* 3. *c.* 124. § 4., the pauper being at the time of her said examination sick and infirm, and unable to travel, and the justices suspended the order accordingly. The order and examination were annexed to the case. And the question made at the Sessions was, whether this order was void, inasmuch as it omitted to set out that the examination was taken before one justice only, and was reported to the other justice, so as to show the particular jurisdiction and authority of the justices under the statute. — LORD ELLENBOROUGH C. J. The justices have no jurisdiction at the common law, but only what is given to them by statute; and the argument is as if this were a proceeding contrary to the common law. It seems to me that the statute in question does not make it necessary for the justices to state the proceedings had under it in their order. — LE BLANC, J. The statute enacts, that in case the pauper is by age, or other infirmity, unable to be brought up to be examined as to his settlement, it shall be lawful for one magistrate to take his examination, and report it to another! and for those magistrates, upon such reports, to adjudge the settlement; but I do not find that the statute makes any alteration in the form of the order. — Order of Sessions confirmed.

An order of removal made by two justices, upon the examination of the pauper taken by one of them, pursuant to statute 49 G. 3. c. 124. § 4. need not state the special circumstances of taking the examination, &c.

VII. *The Direction of the Order.*

859. *Bedwich's Case*, *E. T.* 7 *Will.* 3. *Comb.* 325. — The overseers of the parish of *St. George* are to remove, and they of *Trinity* to receive, and the order was *directed* to both parishes to remove and receive. — It was therefore quashed, for it is *untrue*.

An order of removal directed to both parishes, ordering the one to remove and the other to receive, is bad.

860. *Rex* v. *Wangford*, *E. T.* 10 *Will.* 3. *Carth.* 449. — An order was made by two justices, *directed* to the constables of *B.* to remove three men to *W.* It was objected that this order ought to

An order of removal directed to the constable only, is not

good; for he may refuse to obey it; but if he execute it, the removal is good.

have been directed to the churchwardens and overseers of the poor, and not to the constables alone, for they are not the proper officers for this purpose. — SED PER CURIAM: Since the constables have executed the order, it is well enough, though in strictness they are not bound to obey it though *directed* to them; for if a justice direct a warrant to any person by name who is no officer, he is not bound to obey it; but if he do, and it is a matter within the proper jurisdiction of a justice of the peace, the warrant will bear him out, and he may justify under it.

An order of removal must be directed to the officers of that parish from whence the removal is made.

861. *St. George's* v. *St. Olave's*, *E. T.* 1 *Ann.* 2 *Salk.* 493. — Two orders were returned, the first for settling a poor man, one *T. G.*, and the second a confirmation of the first, upon an appeal to the Quarter Sessions: the first order recited, "That whereas "complaint hath been made unto us, &c. that *T. G.* had of late "intruded into the parish of *St. G.*, we adjudge him to be last "legally settled at *St. O.*; these are therefore to require you to "convey the said *T. G.* to the parish of *St. O.*;" and the direction upon the order was, "To the churchwardens and overseers of the "poor of the parish of *St. O.*" — Quashed; for they ought, and can only order the parish-officers where the intrusion is made, to make the removal.

An order directed to both parishes conjunctively, without saying which was to remove, and which to receive the pauper, is bad.

862. *Binfield* v. *Banstead*, *H. T.* 8 *Ann.* 11 *Mod.* 268. — EYRE moved to quash an order of removal, because it was directed, "To "the churchwardens and overseers of the parish of *Binfield*, and to "the churchwardens and overseers of the parish of *Banstead*, and "whom it may concern," without saying which of the parishes was to convey, or which was to receive the pauper: And THE COURT thought that it ought to be quashed.

An order directed to the parish-officer of different counties, and the justices styling themselves of the county aforesaid, no county being in the margin, is bad. See also Rex v. Chilvers Coton, *ante*, pl. 789.

863. *Rex* v. *Stepney*, *E. T.* 8 *G. 2. Burr. S. C.* 23. — An exception was taken to an order of removal because no county was mentioned in the margin, and it was directed respectively to the churchwardens and overseers of the parishes of *Stepney* in *Middlesex* and *Chetham* in *Buckinghamshire*, and the justices only call themselves justices of the peace *for the county aforesaid*, and therefore uncertain. It ought to appear upon the face of the order, that they were justices for the county of *Bucks*; and for this reason it was quashed.

If the county be named in the margin of the order of removal, it is sufficient; for the margin of an order is part of the order itself. See Rex v. Ufculme, *ante*, pl. 858. and 2 Sess. Cas. 181. Stra. 114.

864. *Rex* v. *Holbeck in Leeds*, *M. T.* 16 *G. 2. Burr. S. C.* 198. — It was objected in this case to the order of removal, that the borough of *L.* is not mentioned in *the body* of the order, but only in *the margin*, and therefore it does not appear that the two justices had jurisdiction to make it. — LEE C. J. I take it to be settled, that, in orders, the margin is to be considered as part of the order, and a plain clear reference to it is sufficient. The margin is, "The "borough of *L.*" and the *direction* is, "To the churchwardens "and overseers of the township of *H.* in the *said* borough." This reference is sufficient in an order. — THE OTHER THREE JUDGES concurred.

An order of removal directed to the parish-officers of "the

865. *Rex* v. *Ulverstone*, *E. T.* 38 *G. 3.* 7 *T. R.* 565. — An order of removal was directed "To the churchwardens and overseers of the poor of the *parish*, *township*, or *division* of *U.*," &c. The counsel for the appellants observed, that such a description was

frequently adopted in orders of removal, but had been the subject of dispute, and that it was wished to have the opinion of the Court, whether such a description was proper.—To which LORD KENYON C. J. answered, that as at present advised he saw no objection to it.

parish, township, *or* division of A." seems good.

866. *Rex* v. *Amlwch*, *M. T.* 6 *G.* 4. 4 *B.* & *C.* 757.—(For the particulars of this case, see *ante*, pl. 256.)

An order of removal was directed to the churchwardens and overseers of the poor of L. In fact L. was a vill, and there were no churchwardens in it: Held, that the word "churchwardens" might be rejected as surplusage, and that the sessions might under the statute 5 G. 2. c. 119. § 1. amend the order by inserting in it the words "or vill."

VIII. *Description of the Parties.*

867. *Rex* v. *Trinity in Chester*, *H. T.* 11 *G.* 1. 2 *Sess. Cas.* 74.—An order was made for the removal of a poor man, his wife, and children, into the parish of *A.* as the place of their last legal settlement: and the order set forth, "*It appearing to us*, &c. that his "(the father's) settlement is the parish of *A.*," without saying that it was likewise the settlement of his wife and children; "we do "therefore adjudge the settlement of the father, wife, and chil- "dren to be in the parish of *A.*" This order being removed, the exception taken to it was that it ought to have set forth the ages of the children; and though it was said, that these are the children, and they gain a relative settlement as part of the father's family, therefore the ages of them need not be set out, yet the exception was allowed by the Court to be good: *and this rule* was laid down, Every order that concerns the removal of a father and his children ought to shew the ages of the children; for they may have gained a settlement in some other right, as by serving as apprentices, as servants, &c.; therefore their ages ought to be set forth, that it may appear to the Court, that by reason of their infancy they have not gained any settlement in their own right, but have only a relative settlement from their father. *Seven* years is an age that the Court would presume a child could gain a settlement at in his own right; but if it appear upon the order, that the child was above seven years old, the order must set forth, that such child hath not gained a settlement in his own right; and if the child hath gained no settlement, then his father's settlement is derived to him.—*N. B.* In this case the order was allowed good as to the father and his wife, though not as to the children.

An order of removal which includes children must state their several ages.

868. *Southell* v. *Needwell*, *M. T.* 11 *Ann. Sett.* & *Rem.* 57.—"Whereas a certain woman was brought-to-bed of a female bas- "tard-child in *N.*, and after dropped in *S.*; these to convey."—KING objected, that it was not said who this woman was.—PARKER C. J. You must either name her, or say you do not know her; as where a person is indicted for stealing the goods of a person unknown, you must aver it to be a person unknown; but an indictment for stealing the goods of a certain person without saying unknown, would be ill.—Order quashed.

An order of removal must state *the name* of the pauper removed, or describe him as a person unknown.

869. *Rex* v. *Heptenstall*, *T. T.* 10 *G.* 2. *Burr. S. C.* 88.—*Daniel K.*, with *Martha* his wife, and seven children, were removed from *H.* to *E.*: one objection to the order was, that it did not set out the ages of the children. In answer to which, it was said, that the order stated *E.* to be the place of their last legal settlement.—THE COURT: That goes to all; and it is an answer. Where a place is adjudged to be the last legal settlement of *the father*, and

The ages of children must be set out when they are removed to *the father*'s settlement, but need not when re-

moved to *their own* settlement.

the children are only sent thither in consequence of its being their father's settlement, the ages of the children must be set forth, because perhaps they may have gained a settlement for themselves since; but it is not necessary to set out the ages of children when the justices adjudge the place to which they remove them to be the place of *their own* legal settlement.

But to render the statement *of the ages of* children unnecessary, it must be expressly adjudged to be the place of *their* last legal settlement.

870. *Rex* v. *Ufculm, M. T.* 13 *G.* 2. *Burr. S. C.* 138. — *Richard M.*, with *Joan* his wife, and their three children, were removed from *C.* to *U.* One objection to the order was, that *the ages* of the children were not mentioned. It was said in answer, that the justices had, in the order, adjudged *U.* to be "*their* last legal settlement." — THE COURT: The distinction is right, that if it be expressly adjudged to be the settlement of the children themselves, there is no need to set out their ages; but otherwise it is necessary in consequential settlements. (*a*)

IX. *Of Passes.*

See stats. 17 *G.* 2. *c.* 5. § 7, 8. 10. 32 *G.* 3. *c.* 45. § 1. 3, 4, 5, 6, 7. 43 *G.* 3. *c.* 61. § 1—4. 3 *G.* 4. *c.* 40. 5 *G.* 4. *c.* 83.

The mayor of a town cannot send a person by *a pass* to the place of her settlement.

871. *Rex* v. *Welchman, E. T.* 12 *G.* 2. *MSS.* — The mayor of *St. Alban's* sent a poor woman who was big with child, and did not appear as a vagrant, but at her own request, by a pass to *B.*, the place of her husband's nativity; and the justices of the peace of the county of *W.* would not take her in, but sent her back again to *St. Alban's*. — An information was moved for against the justices; but THE COURT denied it, because as the woman was not a vagrant, the mayor had no right to send her by a pass, but it should have been by an order of two justices of peace, according to 12 *Ann. c.* 23. — THE COURT seemed to think, that as she had been removed to *B.*, the justices there acted very wrong in sending her back again.

A pass to a different parish to that in which the vagrant is settled, is not conclusive, though unappealed from.

872. *Rex* v. *Stansfield, E. T.* 16 *G.* 2. *Burr. S. C.* 205. — *J. B.* being settled in *Stansfield*, came with a certificate to *Spotland*, in which place he gained a settlement by purchase. He was afterwards apprehended at *M.* as a *vagrant*, and sent from thence with his family by *a pass* to *Stansfield*, to which *pass* no appeal was made at the then next General Quarter Sessions, but the pass was duly recorded at the Sessions pursuant to the statute. After he was so sent by the said *pass*, and before the Quarter Sessions next succeeding the date of it, he being poor, and likely to become chargeable to *Stansfield*, was removed from *Stansfield* to *Spotland*, by the order of two justices. The Sessions were of opinion, that he had been improperly removed to *Spotland*, and ordered him back to *Stansfield*. — LEE C. J. We have considered the question, "Whether, by the late act of 13 *G.* 2. *c.* 24. "a pass unappealed from be as conclusive as an order of two "justices unappealed from?" And we are of opinion, that this act of parliament is not to receive such construction, or be considered in such a manner, as to put a *pass* upon the foot of *an order of two justices* in this respect. In case of an order of two justices, two other justices cannot make a different order;

(*a*) Same point adjudged in Rex *v.* Normanton. Burr. S. C. 213. Rex *v.* Bowling, Burr. S. C. 177, Rex *v.* Stansfield, *ante*, pl. 683.

because the authority of each two would be equal; and therefore it would be a clashing of the same authority. But that does not seem to be the present case at all. This act of parliament of 13 *G.* 2. was made only in order to secure vagabonds, and to send them to their former places of settlement or birth, if to be found; if not, then to the place from whence they came; and it operates upon such as are actually vagabonds. But the act of 13 & 14 *Car.* 2. *c.* 12. was made with a view to prevent vagabonds; and therefore it gave power to fix them in their last legal place of settlement. But the authorities given by these two acts are very different. On that act of 13 & 14 *Car.* 2. *c.* 12. though complaint may be made to one justice, yet one justice cannot act singly; here one single justice may act. So there is a difference too as to the manner of sending them. Upon that act, the removal is to be at the expence of the parish; here, of the county. Another thing that makes one believe the parliament did not intend to put this pass warrant signed by a single justice, upon the foot of an order made by two justices, is, that though the reason would be the same, yet the same care is not taken as to the provision on appeal, for upon an appeal from an order of two justices, there is a provision for costs; but none on this act. Here are no costs given on appeal; yet that provision would be just as reasonable as in the case of an order of two justices, if it had been intended to be put upon the same foot in all other respects; but upon appeals from orders of two justices costs are payable. Now it would be something extraordinary, and cannot well be conceived to have been the sense of the legislature, that a person's being sent by one justice of peace shall have the same effect as if sent by two, and yet that there should not be the same remedy upon an appeal. Therefore we are of opinion, that this act made in relation to vagrants, and the manner of passing them, was in a different view from that which was calculated for the fixing of settlements; and that this act is only calculated to convey them to their settlement, if it can be found: or (in cases where their settlement is not found) only to remove them to the place of their birth, or the abode of their parents, or where last found begging, &c. there to be provided for according to law: and that provision is, "to keep them till "their last legal settlement can be discovered, but no longer:" and then they will be subject to a removal, by virtue of the former act, to their place of last legal settlement; on which removal an appeal will lie, subject to costs. And we hold that the settlement at present in question is at *Spotland*, where the certificate-man made his purchase. Therefore the order of Sessions must be quashed.

873. *Rex* v. *Upmerdon*, *E. T.* 16 *G.* 2. *Burr. S. C.* 214.— *A. B.* was settled at *U.*; but being found wandering and begging, was apprehended in *St. A.*, *Chichester*, and carried before the mayor, who, in pursuance of the statute of 13 *G.* 2. *c.* 24., made a pass under his hand and seal, and stated it to appear, upon examination of her and others, "that the place of her last legal settlement "was in *I.*; and that they are rogues and vagabonds within the "act;" therefore the pass orders them to be conveyed to *I.* There was returned from the Quarter Sessions of *Chichester*, a register and record of the examinations of rogues and vagabonds; and also of the duplicates of the passes signed by the justices, and

A *pass* only prevents *vagrancy*, and does not, like *an order of removal*, adjudge the place of settlement, and therefore, as *it cannot be appealed against*, it is not conclusive on the parish to which

the vagrant is sent as to his settlement.

transmitted by them to the next General Quarter Sessions. It was also stated, that by virtue of this pass, *A. B.* was carried to *I.*, and received and kept there till 25th *July* last; and that the parish of *I.* did not appeal to the Sessions or otherwise reverse the pass; and that after such pass *A.* did not gain any new settlement. — *It* was objected to the pass, First, that it did not appear that the person who made it was a justice of peace: he is only said to be "mayor of *Chichester*," and if he was not a justice of peace he has no jurisdiction; for the jurisdiction is given only to a justice of peace. Secondly, that the examination was not on oath; it is only "upon examination" (generally). Thirdly, that the pass was not conclusive though not appealed from. — LEE C. J. Taking the pass as stated, and taking it as an order, I think the objection to it material. It is stronger here than in other cases; because here the act of parliament directs the very form of the pass, "before *one a justice of peace*;" and the form directs an *examination on oath*; but this pass is not agreeable to the form prescribed by the act of parliament. All the cases are, that the jurisdiction of the justices of peace must be set forth upon the order. But as this pass appears only upon the order of Sessions, it is not sufficiently before us: it ought to be removed by *certiorari*. The being registered at the Sessions does not help it; because the jurisdiction of the justice must appear upon the face of his order; nor will that registering at Sessions help the want of examination on oath. — CHAPPLE, WRIGHT, and DENNISON Js., all agreed the pass was bad. And as they had this morning determined the main point in the case of *Rex* v. *Stansfield*, namely, that the pass is not conclusive, the orders were affirmed.

The parish to which a vagrant is passed cannot appeal against the pass on the ground that the pauper is not settled therein; but must remove him by an original order of two justices.

874. *Rex* v. *Ringwould*, *T. T.* 16 *G.* 3. *Burr. S. C.* 840. — Two justices made *a vagrant pass*, removing *E. A.* and his family as rogues and vagabonds from *W.* to *R.* The question was, Whether an appeal lies from a vagrant pass? — ASTON and ASHHURST Js., were of opinion, that the 17 *G.* 2. *c.* 5. does not give an appeal in this case. It is inconsistent with the 11th section of it. If the Sessions should, upon such an appeal, enter into the merits, they would not send him back to the place where he was only a vagrant, nor to any other; he cannot be removed from the place to which the pass has sent him by any other method than *an original order* of two justices. The proper subject of an appeal is an adjudication; a pass only recites, "that it appears upon examination of the vagrant:" it is not such a positive adjudication as there is an order of removal by two justices. He is passed to the place where he says he was settled: he cannot be sent from it but by an order which adjudges him to be settled elsewhere, from which adjudication an appeal will properly lie to the Sessions. There is no reason for an appeal in such a case, nor any hardship upon the parish to which the vagrant is passed; for as soon as they can find out where his legal settlement is, if it really is not with them, they may remove him to it by a common order of removal. The present appeal is only a general appeal from a pass; it does not show any reason, nor make any particular objection. Here is no order of removal: nothing but a general appeal without any reason given. This pass has the examination of the vagrant annexed to it. If his settlement is not at *R.*, but elsewhere,

they may apply for an order of two justices to remove him to it; and that is the only method by which it can be done.

875. *St. Lawrence Jury* v. *Edgeware*, *E. T.* 17 *G.* 3. EDITOR'S *MS.* — On the 19th day of *June* 1776, *E. S.*, a pauper, the wife of *R S.*, was removed, as a vagrant, by a vagrant pass under the hand of the lord mayor of *London*, with her three children, from the parish of *St. L.* in *L.*, to the parish of *E.* About the latter end of the month of *August* following, the parish-officers of *E.* served the parish-officers of *St. L.* with a notice that they intended to appeal against the said *pass-warrant* at the then next General Quarter Sessions for the city of *L.*; which appeal was preferred accordingly, and the hearing of it adjourned from that until the ensuing Session at *Guildhall*; but no notice of such adjournment was served on the respondents or their solicitor; in consequence of which the hearing of the appeal was not attended by the respondents, and an order was made, reciting, that as the said respondents did not appear to answer the said appeal, "that "the said warrant and judgment of the said justice be quashed, "and that the appeal be allowed; that the pauper and her "children be sent back to the parish of *St. L.*, and that they pay "to the parish of *E.* 7*l.* 19*s.* for the charges of maintaining "the said *E. S.* and her children." These orders were removed into the court of King's Bench by *certiorari*. — DUNNING, on behalf of the parish of *St. L.*, obtained a rule to show cause why this order of Sessions should not be quashed, on the ground that it was an order made upon an appeal against a vagrant pass under the hand and seal of the lord mayor only. — HOWARTH, for the parish of *E.*, contended, that an appeal would lie in some cases against a vagrant pass, as in the case where a foreigner, taken in an act of vagrancy, should, upon a false examination, be removed to a parish to which he did not belong; and therefore the rule, which had been granted on the idea that an appeal would not in any case lie against a vagrant pass, ought to be discharged. — But THE COURT, on hearing the argument of DUNNING, said, that the case of a foreigner was not similar to the present case; for that here the pauper and her children appear to be vagrants; that the parish of *E.*, to which they were passed, had sent them back again, which they could only do by an order from two justices. And they said, that the case of *Rex* v. *Ringwould* (*a*) was decisive of the present. But ASTON J. said, that the decision of this point would not touch upon the case mentioned by HOWARTH of a foreigner, or upon the question, if the *vagrant*, and not the parish, brought the appeal. — The order of Sessions was quashed.

An appeal does not generally lie by *a parish* against a vagrant pass. Whether it does in the case of a foreigner sent under a false examination is undecided. S. C. Cald. 18.

(*a*) *Ante*, pl. 874.

X. *Suspending Order of Removal or Pass.*

See stat. 35 *G.* 3. *c.* 101. § 2.

876. *Rex* v. *Kynaston*, *M. T.* 41 *G.* 3. 1 *East*, 117. — GARROW on a former day obtained a rule to show cause why a *mandamus* should not issue to Mr. *Kynaston*, a magistrate of the county of *Essex*, commanding him to back the warrant of distress issued by the magistrates for the borough of *Colchester* for 20*l.* 16*s.* 3*d.*, being the expences incurred by the parish of *Lexden* in the maintenance and support of *D. Glover* and *Ann* his family, and for

The statute 35 G. 3. c. 101. § 2. after enabling justices to suspend orders of removal of poor persons, and to

order the charges thereby incurred to be defrayed by the pauper's parish, and to direct the charges to be levied by warrant of distress, enacts that if the parties against whom it is issued are out of the jurisdiction of the justice granting the warrant, it shall be indorsed by some other justice within whose jurisdiction they are: This is peremptory on the latter upon request made.

surgical assistance, &c. for the said *D. G.* in his illness, during the suspension of an order for removing him to his parish, and 1*l.* 10*s.* for the reasonable charges of the levy. It appeared that *Glover* on 1st of *May* 1799, as he was driving a waggon on the public road leading through *L.*, had the misfortune to break both his legs, and was immediately taken to the workhouse there, where he continued till the 31st of *July*. On the 6th of *May* two justices of the peace took the pauper's examination and made an order for removing him and his wife, who was then attending him, from *L.* to *Coggeshall* in *Essex*; and at the same time the magistrates indorsed an order of suspension on the order of removal, by virtue of the stat. 35 *G.* 3. *c.* 101., stating, that it would be dangerous to remove him at that time; and he continued there accordingly till the 31st of *July*, when the order of removal was by their permission executed. The same magistrates afterwards made an order on the parish-officers of *G. Coggeshall* to repay the parish of *L.* 20*l.* 16*s.* 3*d.* for expences incurred in the cure and maintenance of the pauper: and the overseers of *G. Coggeshall* not paying this within three days after demand, nor giving notice of appeal, as required by the same act, the magistrate granted a warrant of distress. But *G. Coggeshall* being without the jurisdiction of the magistrates granting the warrant, the parties applied to the defendant who was an acting magistrate within the jurisdiction of *G. Coggeshall* to indorse the warrant of distress for execution, which he refused: whereupon the present rule was obtained. —LORD KENYON C. J. after looking into the act of the 35 *G.* 3. *c.* 101., said, it was impossible to make any question upon this part of it: It is peremptory upon the magistrate under these circumstances to indorse the warrant; he has nothing to do with the propriety of making the original order or granting the original warrant: He acts merely ministerially; in like manner as justices do in allowing a poor rate, whose signatures are mere matter of form. (*a*) The justices indeed by whom the original order and warrant were issued had a discretion to exercise upon the matter submitted to them; but the magistrate who merely indorses the warrant of another under this act is not answerable for the legality of it, which remains at the hazard of him who first granted it. Here also the order being for payment of above 20*l.* might have been appealed against by the parties who were dissatisfied with it, and then the merits of the question might have been discussed. But the Court cannot do otherwise at present than make the rule absolute.

(*a*) Vide Rex v. The Justices of Dorchester, 1 Str. 393.

A party aggrieved by an order of justices, directing payment to the amount of above 20*l.* of the costs and charges of the suspension of an order of removal, under statute 35 G. 3. c. 101. § 2. may appeal to the next sessions,

877. *Rex* v. *Bradford*, *M. T.* 48 *G.* 3. 9 *East*, 97 — Two justices awarded 41*l.* 14*s.* 9*d.* for expences incurred by reason of the suspension of an order of removal under stat. 35 *G.* 3. *c.* 101. No notice of appeal against such costs was given until 13 days after they had been demanded. The Sessions allowed the appeal to be entered and adjourned, subject to the opinion of this Court whether the appellants were entitled to an appeal; they not having given notice of appeal *within three days* after demand made. The question arose upon the construction to be given to these words of stat. 35 *G.* 3. *c.* 101. § 2. "Provided nevertheless that if the sum so ordered to be paid on account of such "costs and charges exceed the sum of 20*l.* the party or parties "aggrieved by such order may appeal to the next General Quarter

" Sessions against the same, *as they may do against an order for* " *the removal of poor persons by any law now in being.*" The following words, forming a prior part of the same section, " if the " party shall refuse or neglect to pay the said charges within " three days from the demand thereof, *and shall not within the* " *same time give notice of appeal as is hereinafter mentioned,* it shall " and may be lawful for one justice of the peace by warrant under " his hand and seal to cause the money to be levied by distress, " &c." — LORD ELLENBOROUGH C. J. The only consequence to be deduced from the words of the clause, from the not giving notice of appeal against the charges within three days after the demand of them, is, that the party not giving such notice within the time subjects himself to the inconveniency of a distress. But the subsequent proviso giving the appeal is conceived in the most general terms, that the parties aggrieved may appeal to the next Session against such order, as they may do against an order of removal by any law in being. And it is not disputed but that the present appeal was duly made, if it is to be regulated by the rules which govern appeals against orders of removal. But it is said, that by reason of the antecedent words, " hereinafter " mentioned," referring to the appeal given by the latter part of the clause, we ought to import into that latter part words of reference to the former: but that would be to alter, and not to interpret the clause as it now stands; the meaning of which appears plainly to be this; if the party aggrieved by the order, and intending to appeal against the amount of the charges, will give notice of appeal within three days after demand made, he shall be relieved from the inconvenience of a distress; but though he neglect to do so, he only subjects himself to that inconvenience; but his right of appeal, which is afterwards given, is not thereby taken away: and if he afterwards think proper to appeal within the time allowed by law for appeals against orders of removal, he is expressly empowered to do so. Then if the order should be wholly quashed, or the sum to be paid be reduced upon appeal, no injustice will follow; for it is a consequence of law, that the money paid upon an order which was afterwards vacated in whole or in part, should be refunded by those who have received it; and if it were not repaid, an action for money had and received would lie to recover it back again. — Order of Sessions confirmed.

though he omit to give notice of such his appeal within three days after the demand of such costs and charges.

878. *Rex* v. *Everdon, M. T.* 48 *G.* 3. 9 *East*, 101. — Two justices made an order for the removal of a pauper, and an order of suspension thereupon (*without seeing the pauper*), upon the examination of her father only, who swore " *that the pauper from* " *excessive infirmity and sickness was unable to be brought before* " *the justices for examination,*" and the question for the consideration of the Court was whether the stat. 35 *G.* 3. *c.* 101. § 2. which gives to justices the power of suspending orders, in case any poor person shall *be brought before any justice or justices of the peace for the purpose of being removed,* &c. authorised an order of suspension when the pauper was *not* brought before the justices. — LORD ELLENBOROUGH C. J. I hope that the apparent justice of the one construction, and the great and manifest inconvenience of the other, do not too much warp my mind in coming to the conclusion which I have done: for it would indeed be a grievous

Under the statute 35 G. 3. c. 101. § 2. an order of justices, suspending an order of removal on account of sickness may be made though the pauper were *not brought before the justices* at the time of making such order.

construction if we were bound to adopt the literal sense of the words of the statute which have been commented on. But I hope we shall do no violence to the words, and I am sure we shall not violate the spirit of the act, by construing the words, "in case "any poor person shall from henceforth be brought before any "justice or justices of the peace for the purpose of being re-"moved," to mean, in case a question concerning the removal of any poor person, or, if the case of any poor person shall be brought before the justices of the peace for the purpose of his removal, &c. The language of the act adverts to the case which most generally happens, where the pauper is brought in person before the magistrate to be examined as to his settlement; but that is not necessary to be done in all cases, as appears from what was said by Mr. Justice *Buller*, in *Rex* v. *Bagworth* (*a*), who denied that there was any such general rule, as that it was necessary for the pauper to be examined; and he instanced the case of infants of tender years, where it is plainly impossible. And he referred to a case from *Comberbach*, 478. where Lord *Holt* said, that "if "it can be, it is fit it should be so, but not absolutely necessary;" and as it would be useless in cases of infancy or lunacy, so it might be dangerous to the magistrates themselves, in the case of infectious disorders, to go to the pauper to take his examination in person; and to bring him before the magistrates would be in cases of extreme sickness or infirmity, to expose him to the very mischief which the act was intended to remedy. All therefore that the act meant was, not that where any pauper was brought personally, but where his case was brought judicially before the magistrates, for the purpose of his removal, that they should have power to suspend the execution of the order of removal, if it appeared to them, that is, by due examination of the facts, that from sickness or infirmity of the party the removal could not then safely be made; this is the plain sense and spirit of the act, though somewhat straining upon the words of it, but no other construction can be put upon them consistently with the general object of the act, and in doing this we do not go further against the letter of the act than was done in the case referred to of *Anthony* v. *Cardenham* (*b*), where the description of a person, *not having any child*, was construed to mean not having any child which could be a burden to the parish where the father was hired and served. — The other judges concurred. — Order of Sessions quashed.

(*a*) *Ante*, pl. 828.

(*b*) *Ante*, pl. 257.

Coupling the statute 35 G. 3. c. 101. with the stat. 3 W. & M. c. 11. § 9. appeals lie against an order of removal which was suspended, and against a subsequent order for costs, notwithstanding the death of the pauper before any removal of him in fact made, and

879. *Rex* v. *St. Mary-le-Bone*, *M. T.* 51 *G.* 3. 13 *East*, 51. — By order of 3d *July* 1809, the pauper was removed from *H.* to *St. M.*, which order was suspended, pursuant to the stat. 35 *G.* 3. *c.* 101. By another order of the 18th of *September* following, the same justices (reciting that the pauper was then dead of the sickness under which he lately laboured, and that it had been proved on oath before them, that the reasonable charges incurred by the suspension of the order of removal amounted to 5*l.* 2*s.* 8*d.*) directed those charges to be paid on demand, in pursuance of the statute by the parish officers of *St. M.* to those of *H.* *St. M.* thereupon appealed to the Sessions, as well against the order of removal as against the order for the payment of the charges: but the Sessions dismissed both the appeals, subject, &c. The case stated, that neither of the orders of removal or suspension thereof were served on the parish officers of *St. M.* until after the death

of the pauper, which happened between the 3d and the 11th of *July*, 1809; after which time the parish officers of *St. M.* were served with the above-mentioned orders, and the 5*l.* 2*s.* 8*d.* was demanded of them, at which time they gave notice of appeal to the parish officers of *H.* against the order of removal of the 3d of *July*, 1809, "which said order was suspended on the day of the "date thereof," and also against the order of adjudication, dated the 18th of *September*, 1809, &c. for the payment of 5*l.* 2*s.* 8*d.* for the charges incurred by the suspension of the said order of removal, dated the 11th of *December*, 1809. (*a*) That the respondents offered no evidence that the pauper was settled in *St. M.*, but contended that no appeal could lie to the Sessions against the said order of removal, inasmuch as the same had never been executed, and that there can be no execution of an order of removal, but by delivering the pauper to the officers of the parish to which he is to be removed; until which time, the parish to which he is sent is not aggrieved, and until aggrieved (under all the antecedent subsisting laws relating to the settlements of the poor, the orders for their removal, and appeals against these orders) no right or ground of appeal can arise, and of course the Sessions can have no appellate jurisdiction. That the order for the payment of 5*l.* 2*s.* 8*d.*, the adjudged costs and charges, after the suspension of the order of removal, was not served till after the death of the pauper: and as the sum is less than 20*l.* by stat. 35 *G.* 3. *c.* 101. no appeal is given to the Sessions, and that Court has no authority to review, reduce, or make any alteration whatever in the sums so adjudged to be paid by the two justices. That the appellants contended that they were not ousted of their right to appeal; but that the respondents were bound to prove that the pauper was settled in the parish of *St. M.*, that order having been appealed against; and that the order for the payment of expences was not conclusive, for the purpose of establishing the settlement of the pauper, as the effect of that order would be to oust the parish, to whom the pauper was moved, of their right of appeal, and fix them with the payment of expences for a pauper who might not be legally settled with them; which was never intended by the statute. — TROLLOPE now contended, that no appeal lay against the order of removal under stat. 3 *W.* & *M.* *c.* 11. § 9., and 8 & 9 *W.* 3. *c.* 30. § 6. because it had not, in fact, been executed; nor any appeal against the order for payment of costs, because the stat. 35 *G.* 3. *c.* 101. which alone gives any appeal against costs upon orders of removal, limits it to cases of 20*l.* and upwards. — LORD ELLENBOROUGH C. J. The appeal is by the first statute of *William* given to the party *aggrieved* by the determination of the justices respecting the settlement of the pauper; then, though the grievance grow by a subsequent statute, the party is still aggrieved by the order of removal. Before the stat. 35 *G.* 3. there was no grievance to the parish to which the order of removal was made, until it was executed; but the statute attaches a contingent consequence to the order itself in this case, which, coupled as it is with the order for payment of costs, makes it a *grievance*, though the pauper died before any removal in fact took place. Then the appeal against the order for costs is not against the quantum, but

though the costs were under 20*l.*

(*a*) Q. If this should not be *July* 3d, 1809?

against the liability of the parish to pay any costs at all in this case, taking it as a consequence of the order of removal appealed against. — Orders of Sessions, dismissing the appeals, quashed.

Where husband and wife and their children were removed to their settlement, and the order was suspended as to the husband, until it should be made to appear that he was sufficiently recovered to be able to travel; the wife and children being removed after his death, without any subsequent order removing the suspension of the first order, is no reason for the sessions to quash that order on appeal, nor to quash another order for payment of the charges of such suspension.

880. *Rex* v. *Englefield*, *H. T.* 51 *G.* 3. 13 *East*, 317. — Two justices made an order, dated the 21st of *March* 1809, for the removal of *J. T.*, his wife, and children from *E.* to *C.*; and by another order of the same date, reciting, that the said *J. T.* was then unable to travel by reason of sickness, they suspended (by virtue of the stat. 35 *G.* 3. *c.* 101. § 2.) the execution of the first order as to *J. T.* until it should be made to appear to them, that he was sufficiently recovered from his illness to be removed without danger; and afterwards they made a third order, dated 17th of *March* 1810, by which, after stating that it had been proved on oath before them, that *J. T.* named in the order of removal first mentioned, died on the 7th instant, and that the reasonable charges incurred by the suspension of the said order of removal amounted to 41*l.* 4*s.* 6*d.*, they directed the parish-officers of *C.*, to which the said pauper was to have been removed, to pay those charges to the parish-officers of *E.* After the death of *J. T.*, his wife and children were removed under the first mentioned order, from *E.* to *C.*; and on appeal by the latter parish against such order, and also the order for the payment of the charges, all the three orders above-mentioned were quashed as insufficient, inasmuch as the order suspending the order of removal had not been itself taken off by an order of magistrates on the death of *J. T.*, subject to the opinion of the Court on these facts. Upon the opening of the case, the Court mentioned a difficulty which they thought could not be gotten over, *viz.* upon what ground the Sessions could quash these orders, which upon the face of them were all good, when the real objection to the removal of the wife and children, if any, was the want of another order of magistrates taking off the suspension of the original order of removal. The respondent's counsel, indeed, suggests that the death of the husband operated as a natural death to the order of suspension: but the Court did not decide the case on that ground; and it was observed, *e contrà*, that the terms of the order of suspension did not apply to the case of death, but it was to operate till the sick person could be safely removed; for the other reason, however, the Court quashed the order of Sessions; and LE BLANC J. referred to the precedent of a permission to remove after an order of suspension, given in the new edition of *Burn's Justice*, as being best adapted to such a case.

The power given to magistrates under 35 *G.* 3. c. 101. § 2., of ordering the charges incurred during the suspension of an order of removal, to be paid by the parish to which the order is made, is confined to two cases only, viz.

881. *Rex* v. *Chagford*, *H. T.* 1 & 2 *G.* 4. 4 *B.* & *A.* 235. — On the 2d *December* 1816, two justices, removed *William E.*, with his wife and children, from *C.* to *S.* This order was on the same day suspended, on account of the illness of *William E.* On the 1st of *July* 1817, the parish-officers of *C.* believing the pauper sufficiently recovered to be removed, the following order was made by the magistrates: "Whereas it is now made appear unto us, the justices within named, and we are fully satisfied that the within order of removal may be executed without danger; we do, therefore, hereby order the same to be forthwith put in execution accordingly: And whereas it is duly proved to us, upon oath, that the sum of 22*l.* 17*s.* 1½*d.* hath been incurred by the suspension of the within order of removal; we do,

" therefore, order and direct the churchwardens or overseers " of the poor of the parish of *Staverton*, to which parish the said " *William E.* is ordered to be removed, to pay the said sum of " 22*l.* 17*s.* 1½*d.* to *Richard Thorn* on demand." Immediately after this order was made, it was ascertained that the pauper was still too ill to be removed, and accordingly, on the seventh day of the same month, the justices signed a second order of suspension in the usual form. On the 16th *May* 1819, the pauper's father died at *C.*, and by his death two freehold houses in the parish of *C.*, descended to the pauper, as heir at law. The parish-officers of *C.* thereupon ceased to relieve the pauper and his family. On the 7th *February* 1820, another order was made, of which the following is a copy: " Whereas it is now made appear unto us, the " justices named in the order of removal, and suspension thereof " hereunto annexed, and we are fully satisfied, that such order of " removal may be executed without danger; we do, therefore, " hereby order the same to be forthwith put in execution accord- " ingly. And whereas it is duly proved to us, upon oath, that the " sum of 60*l.* 9*s.* hath been incurred by the suspension of the said " order of removal; we do, therefore, order and direct the church- " wardens and overseers of the poor of the parish of *Staverton*, to " which the parish the said *William E.* is ordered to be removed, " to pay the said sum of 60*l.* 9*s.* to *Richard Thorn*, on demand." The pauper was never removed, but on the 18th *February* 1820, the appellants were, for the first time, served with the order of removal, and with the several other orders hereinbefore mentioned, and on the same day payment was demanded of the several sums of 22*l.* 7*s.* 1½*d.* and 60*l.* 9*s.* as the expences incurred by the suspension. Against these orders the parish of *S.* appealed, and gave the following notice. " Take notice, that we, the church- " wardens and overseers of the poor of the parish of *S.* in the said " county of *Devon*, do intend, at the next Quarter Sessions of the " peace, to be holden at the castle of *Exeter* in and for the said " county of *Devon*, to commence and prosecute an appeal against " an order made under the hands of *Baldwin Fulford* and *George* " *Gregory*, two of His Majesty's justices of the peace in and for " the said county of *Devon*, and bearing date the 1st *July* 1817, " so far as the same order directs the churchwardens or overseers " of the poor of the parish of *S.* to pay the sum of 22*l.* 17*s.* 1½*d.* to " *Richard Thorn*, as the sum incurred by the suspension of an " order of the said *Baldwin Fulford* and *George Gregory*, for and " concerning the removal of *William E.* and *Winifred*, his wife, " *John E.*, *Mary E.*, and *Elizabeth E.*, their children, from and " out of the said parish of *C.* into our said parish of *S.* And also, " take notice, that we, the churchwardens and overseers of the " poor of the parish of *S.*, in the said county of *Devon*, do also " intend at the next Quarter Sessions of the peace to be holden at " the castle of *Exeter* in and for the said county of *Devon*, to com- " mence and prosecute an appeal against another order, under the " hands of the said *Richard Fulford* and *George Gregory*, and " bearing date the 7th day of *February*, 1820, so far as this order " directs the churchwardens and overseers of the poor of the " parish of *S.*, to pay the sum of 60*l.* 9*s.* to *Richard Thorn*, as the " sum incurred by the suspension of the said order, for and con- " cerning the removal of the said *William E.* and *Winifred* his wife,

the death or removal of the pauper; and therefore, where a pauper, during the suspension of an order of removal, became irremovable in consequence of an estate descending to him: Held, that such a case was not within the act; and that the pauper, not having been removed, no order for the payment of any charges incurred during the suspension of the original order of removal, could be made.

"and the said *John E.*, *Mary E.*, and *Elizabeth E.*, their children, "from and out of the said parish of *C.* into our said parish of S. "The Sessions, on appeal, quashed both these orders, subject to a "case for the opinion of this Court."—ABBOTT C. J. In this case, we are called upon to put a new construction on this act of parliament, which was passed in order to prevent a grievance arising from the too great temptation afforded to parish-officers by orders of removal, to convey paupers from one place to another during sickness. The second section recites, that poor persons are often passed to the place of their settlement during the time of their sickness, to the great danger of their lives; and it gives a power to magistrates, in order to remedy this inconvenience, of not carrying their order into immediate effect, but of suspending its operation for a time. But then, in order to prevent this from producing any hardship to the removing parish, it provides, that no act done by the pauper during the suspension shall give him a settlement, and empowers the magistrates to order the intermediate charges to be paid by the parish to which the order is made, in case any removal shall take place, or in case of the death of such poor persons before the execution of such order. This power, however, seems to me to be confined to these two cases only, *viz.* the removal and death of the pauper. Whether or not it would have been expedient for the legislature to have provided for the present case, it is not for this Court to say. All that we can do is, to determine that the non-removal of the pauper prevents the case from falling within the act. I should have thought, indeed, that as the order of the magistrates, not being within the act, was altogether nugatory, the proper course for the Sessions to have pursued would have been, not to have quashed the order, but to have dismissed the appeal. However, as they have done substantially right, I think their order ought to be confirmed.—BAYLEY J. It might, perhaps, be the object of the legislature when this act of parliament was passed, to take away from parish-officers the inducement of a hasty removal, by giving a power of recovering the charges incurred in all cases, including the present. But they have not said so, and the safest course for the Court is to abide by the words of the statute. Besides, in the present case, a very long period has elapsed, during which this order remained suspended, and no notice of it was given to the opposite party. Now, if that notice had been given, (and there are no words in the act that supersede the necessity of it,) it might have enabled the other parish to have made prompt inquiry, and to have ascertained the fact relative to the settlement of the pauper. I think, therefore, that this affords an additional reason for holding that the Sessions have come to a right conclusion in this case.—HOLROYD J. This statute cannot, I think, be construed so as to apply to this case; although, probably, the legislature would, if it had occurred to them, have provided for it. The words used, however, are too express to include the present case. The cases under the statute of *Elizabeth*, as to ecclesiastical leases, are very different. There the words of the statute, being general, were restrained in construction, so as only to include leases within the intention of the statute; but here the words are particular, and cannot, I think, be extended by construction.—Order of Sessions confirmed.

882. *Rex* v. *Lampeter*, *M. T.* 5 *G.* 4. 3 *B.* & *C.* 454. — An order was made, dated the 14th day of *May* 1821, for the removal of *G. R.*, widow, from *Lampeter* to *Llanfairclydoge*, the execution of which order was on the same day suspended, because it appeared to the justices that it would be dangerous for the pauper to travel by reason of infirmity of old age. By another order of the 16th of *February* 1824, the same justices, reciting that the pauper *G. R.* was then dead, and that it had been duly proved to them upon oath that the sum of 12*l.* 13*s.* 6*d.* had been incurred by the suspension of the order of removal, directed the churchwardens and overseers of *Llanfairclydoge* to pay the said charges to the churchwardens and overseers of *Lampeter*, or to such of them as should demand the same. On the said 16th of *February* 1824, the appellants were for the first time served with the order of removal, and with the other orders hereinbefore mentioned, and on the same day payment was demanded of the sum of 12*l.* 13*s.* 6*d.* as the expences incurred by the suspension. Against the order of removal *Llanfairclydoge* appealed. Upon hearing of the appeal at the Quarter Sessions, the Court decided that the pauper being dead, and the order of removal and suspension not having been executed, or any service made of them in the pauper's lifetime, nor after the pauper's death, until the demand of payment, the order of removal became a nullity and inoperative, and they accordingly precluded the respondents from giving evidence in support of the order of removal and of the adjudication of settlement in the appellant parish, and quashed the order subject to the opinion of this Court. — ABBOTT C. J.: I am of opinion, that the decision of the Court of Quarter Sessions is right. The case of *Rex* v. *St. Mary-le-Bone* (*a*) at the utmost only decided that the death of the pauper during the suspension of an order of removal did not make the order void, and that the subsequent order for the payment of costs was a grievance on the parish to which the removal was directed to be made, and therefore that an appeal lay against such an order; but no question arose in that case as to the necessity of serving notice of the order of removal, or of the order suspending it. That question now comes before the Court for the first time. The legislature has not fixed any precise time for that purpose. It is manifest, however, from the 49 *G.* 3. *c.* 124. § 2., that the legislature considered that such an order might be served before the removal; and if a suspended order may be served, and reason and convenience require that it should be served before removal, the service must be within a reasonable time. I am clearly of opinion, that a period of three years having elapsed between the time when the order of removal was made and the death of the pauper, and no notice of the original order, or of the order for the suspension of it, having been given during that period, the order was not served within a reasonable time, and consequently the order of Sessions must be confirmed. — BAYLEY J. The decision in *Rex* v. *St. Mary-le-Bone* is perfectly consistent with the opinion now delivered by my Lord Chief Justice. In that case the pauper died before the parish sought to be charged could have had any opportunity of appealing against the order of removal. They were bound to appeal to the next practicable Sessions after the order of removal was made. Now the orders of removal and suspension were made on the 3d of *July*, and the pauper died on the 11th of *July*. The 35 *G.* 3. gave

An order of removal was made and suspended on the same day, by reason of the infirmity of the pauper. She lived three years afterwards, and no notice of the order of removal was served on the parish to which she was to be removed under the order, until after the death of the pauper: Held, that notice of the order not having been served within a reasonable time, the order of removal was a nullity.

(*a*) *Ante*, pl. 879.

magistrates the power of suspending orders of removal, and gave the costs of such suspension; and it was decided in the case cited, that an order for costs, consequent upon such order of removal being suspended, was a grievance to be appealed against within the meaning of the statute 3 *W. & M. c.* 11. § 9. It is perfectly consistent with that decision to hold that there should not be an indefinite power of delaying the service of the order. It is just that the parish sought to be charged should have an opportunity of investigating within a reasonable time whether they are liable to the burden so sought to be thrown upon them. By the delay of three years the opportunity of examining the pauper has been lost, and the expence incurred in the supporting the pauper may be thrown upon a number of persons who were not inhabitants of the parish during that period.—LITTLEDALE J. concurred.—Order of Sessions confirmed.

XI. *Of returning after Removal.*

The justices may commit a pauper who returns after an order of removal, although the order be quashed at Sessions, and removed on *certiorari* if it be affirmed.

883. *Rex* v. *Hall, H. T.* 7 *Will.* 3. 5 *Mod.* 163. — An order was made by two justices of peace to remove a poor man from *R.* to *St. M.*; and, upon an appeal, the order was quashed. Afterwards, upon a *certiorari* brought, the Sessions' order was quashed, and the first order was confirmed, so that the poor man was now settled at *St. A.*'s; but of his own accord he returned to *R.*, and the justices conceived that they had not any power to send him to the house of correction for returning as aforesaid, because they were of opinion that the first order was not before them, being removed by *certiorari*. Therefore a motion was made, that the Court would grant a rule to enforce the execution of the former rule made in this case, by which the Sessions' order was quashed, and the order of the two justices confirmed. — But THE COURT directed, that the justices should have the former rule of Court showed to them, and the order of the two justices, and if they refused to punish the persons afterwards, then to move the Court upon an affidavit of the matter.

The charge of returning after removal must be *on oath*. The party must be summoned to make his defence.

884. *Rex* v. *Angell, T. T.* 8 *G.* 2. *B. R. H.* 124. — The justices of *Berks* had a petty Sessions to search after vagrants, and a poor man residing in the parish of *B.* being examined, confessed himself to be settled in the parish of *S.*; whereupon the justices ordered him to be removed to *S.*: but the pauper threatened to return, and did return the same day to *B.*, pretending colourably, to be a hired servant to a parishioner of *B.*; whereupon the defendant, who was a justice of peace for *Berks*, and was present at the petty Sessions, without any *summons*, or *oath* made of his return, committed the pauper to the house of correction, where he was kept three days. The Court was thereupon moved to grant an information against the defendant. — THE COURT allowed the transactions of the petty Sessions in this case to be irregular, because there was no complaint made of his being chargeable or likely to be chargeable to the parish of *B.*; but yet as that was only a mistake of judgment, the Court would not have thought it worthy of punishment; but the sending him to the house of correction was punishing him after having convicted him unheard, and that is contrary to natural justice; and thereupon, upon the authority of the case of the justice of *Hertford*, they were for granting the information; but as no malice appeared in the jus-

tice, the Court allowed the prosecutor to accept of some proposals made by the justice to make him amends, and so it went off.

885. *Baldwin* v. *Blackmore*, *E. T.* 31 *G.* 2. 1 *Burr. Rep.* 595.— The plaintiffs *W. Baldwin* and *S.* his wife, being paupers legally settled in the township of *B.*, and having been regularly and properly removed from *M.* to *B.* as the place of their last legal settlement, which order was not appealed from, they returned of their own accord, and without bringing any certificate with them, from *B.* to *M.* On this complaint being made in writing, and upon oath, to the defendant, who was a justice of peace of the county of *Lancaster*, wherein the parish of *M.* lay, by the overseer of the said parish, he issued his warrant to bring them before him; who being accordingly brought before him, and the facts being fully proved, upon oath made by *T. Murgatroyd*, one of the churchwardens of *M.*, he committed both of the paupers to the house of correction, there to remain until they "should be "*discharged by due course of law.*" The questions were, First, Whether there ought to have been a previous conviction of vagrancy? Secondly, Whether the wife could be convicted of vagrancy, or be liable to be sent to the house of correction for returning without a certificate, as she only accompanied and resided with her husband? — LORD MANSFIELD now delivered the resolution of the Court: The warrant of commitment is illegal. There are two acts of parliament, the 13 & 14 *Car.* 2. *c.* 12. and 17 *G.* 2. *c.* 5., upon one of which this warrant must be founded, though it does not appear upon which of the two the justice proceeded. Now this warrant is not within this former act of 13 & 14 *Car.* 2., nor is the case itself within it. These persons did not go to any parish carrying with them a certificate of their being inhabitants of their proper parish; nor is the commitment made "to the house of correction, there to be punished as a "vagabond;" nor "to a public workhouse, there to be employed "in work and labour;" as that statute directs: so that the warrant is not at all agreeable to the directions of that act, which specifies the particular manner of sending the offender to the house of correction, or to a public workhouse; for it is only "to "remain *till discharged by due course of law.*" Neither can this warrant be good upon the 17 *G.* 2. *c.* 5. because, though this is indeed a commitment to the house of correction, which the latter act directs, yet it is "to *remain there till discharged by due* "*course of law;*" whereas, by this act, the power given the justice is, "to commit such offenders to the house of correction, there to "be kept to hard labour for any time *not exceeding one month.*" But this warrant is quite general, it is an indefinite commitment; not for a precise limited time, as this act expressly directs and requires. Therefore the warrant of commitment is totally illegal, and consequently the plaintiff is entitled to the damages that he has recovered. And you will observe, that we go only upon the warrant, which, for the reasons I have mentioned, we hold to be totally illegal.

The warrant committing a pauper who returns after an order of removal, must be on the 17 G. 2. c. 5. and must pursue the words of the act. See 3 Term Rep. 725.

886. *Rex* v. *Cole*, *M. T.* 12 *G.* 3. *MSS.* — This was a motion to discharge a man out of custody upon the following objections. First, the commitment doth not state to what place the man returned. Secondly, Nor that he returned without a certificate. Thirdly, That it did not appear that he had been before

The commitment of a pauper for returning after removal must state *the parish*

to which he returned.

convicted as a vagrant, which prior conviction alone under the 17 *G.* 2. *c.* 5. gives a power of commitment for a month. — LUCAS on the other side contended, that it had never been determined, that a prior conviction was necessary. This commitment may be supported under the 13 & 14 *Car.* 2., if not under the 17 *G.* 2.; and insisted, that it must be understood that he returned to the parish of the *Holy Trinity*, because it was stated that he was removed from thence. — The commitment was as follows: "To "——constables of *Cambridge*, and to——keeper of——. "These are to command you the said constables, in His Majesty's "name, forthwith to convey and deliver into the custody of "the keeper of the said workhouse, the body of *Elere Cole* "for returning from the parish of *St. Sepulchre's*, after a legal "warrant of removal from the parish of the *Holy Trinity*, in the "town aforesaid; and which warrant of removal was confirmed by "the last General Quarter Sessions of the county of *Cambridge*: "and you the said keeper are hereby required to receive the "said *Elere Cole* into your custody in the said workhouse, and "keep him to hard labour for the space of one month." — LORD MANSFIELD: This commitment cannot be supported; it does not say to what place he returned. — ASTON J. It is totally uncertain — WILLES J. of same opinion. The commitment must be quashed.

An order of removal only prevents the party thereby removed from returning again in a state of vagrancy to the same parish. See Rex *v.* Kenilworth, *ante*, pl. 455.

887. *Rex* v. *Fillongley*, *M. T.* 29 *G.* 3. 2 *T. R.* 709. — The pauper *J. G.*, was removed from the parish of *F.* to the hamlet of *K.*, and on the same day on which he was delivered with the said order of removal he returned back to the tenement in *F.*, of the yearly value of 10*l.* and upwards, which he had before rented and resided on for some years; but without making any new agreement with his landlord: after residing thereon about three quarters of a year, he was again removed to *F.* An appeal was entered against the first order, but not prosecuted. — THE COURT were of opinion, that *G.* had a right to return, for that an order of removal only prevents a return in a state of vagrancy.

A conviction stated, that plaintiff, having been brought before a magistrate on an information charging him with having unlawfully returned, without a certificate to a parish from which he had been removed, and that upon that occasion he confessed himself guilty: Held, that this conviction was good upon the face of it, and that it was not necessary to

888. *Mann* v. *Davers*, *M. T.* 60 *G.* 3. 3 *B.* & *A.* 103. — Action for false imprisonment. Plea, not guilty. The cause was tried before DALLAS C. J. at the *Suffolk* Spring assizes, 1818, when a verdict was found for the plaintiff, 40*s.* damages, *subject*, &c. The defendant was a magistrate of the county of *Suffolk*, and had committed the plaintiff to prison as an idle and disorderly person under the 17 *G.* 2. *c.* 5. The defence was a regular recorded conviction of the plaintiff, and the information stated, that within three months the plaintiff unlawfully returned from the parish of *A.* to the parish of *B.*, from which last-mentioned parish he had been legally removed to the said parish of *A.* by an order, &c. without bringing a certificate from the said parish of *A.* The conviction then stated that the plaintiff being brought before the defendant had confessed himself guilty of the offence. It appeared from the facts stated in the case that when the plaintiff returned to the parish, he was not in a state of pauperism, but that he maintained himself by his own labour, and that he was actually taken up upon the charge upon which he was convicted, when he was working in the harvest-fields. The question was, Whether the conviction was a bar to the action? — ABBOTT C. J. This information pursues the language of the statute, and in

so doing, it does all that is necessary to be done. The returning to the parish without a certificate, was, at least, *primâ facie* evidence of his being an idle and disorderly person, and then it was for the defendant to show that he had a lawful excuse for returning. It would be extraordinary indeed, if a person who refuses to answer, and suffers the magistrate to convict him, should afterwards be at liberty to bring an action against the magistrate; the defendant here confessed the substance of the charge, and when called upon for an excuse, he does not give one, but suffers imprisonment in order that he may afterwards bring an action against the magistrate. If we to were hold this information to be bad, it is impossible to say how many actions might be brought against magistrates under similar circumstances. — BAYLEY J. The facts of the case induce a suspicion, that it was one of considerable hardship on the party who had been removed. We must, however, consider the situation in which magistrates would be placed, if a party, who neglected to make his defence when he had the opportunity, could afterwards sue the magistrate. It seems that the parish-officer had lodged before the magistrate a complaint, upon which, if established, the party was liable to punishment. The substance of the charge was that he had returned unlawfully; if he could show any lawful excuse for his return he might have stated that before the magistrate: he, however, confesses that he is guilty of the offence charged, upon which the law says that he is an idle and disorderly person, and I am of opinion, that he cannot now turn round and bring an action against the magistrate. — HOLROYD J. concurred. — BEST J. This conviction appears to be in the ordinary form; nevertheless, I must say that the parish-officer acted most improperly in taking a man up as a vagrant, who was at work in the harvest-field. But when he was before the magistrate, and alleged no fact to show that he was not, as he appeared to be, in a state of vagrancy, the magistrate could do nothing but convict him. Had he stated to the magistrate that he returned for the purpose of working, it would have been a question for the Court whether the magistrate should not have used the language of this Court in the case of *Rex* v. *Fillongley*. (a) — Judgment for the defendant.

state in it expressly any act of vagrancy, it being for the party convicted to show, in his defence, that he did not return in a state of pauperism.

(a) *Ante*, pl. 887.

XII. *Of Orders unappealed from.*

889. *Rex* v. *Chipping Farringdon*, *T. T.* 12 *Will.* 3. 2 *Salk.* 48. — *J. S.* was removed by order of two justices from the parish of *A.* to *Chalbury*, and from thence by order of two justices to *Chipping*. It was objected, that *Chalbury* ought to have appealed. — HOLT C. J. declared, that sending the poor man to a third place is falsifying the first order, which cannot be done but by appeal; for the order of two justices is a determination of the right against all persons till it be reversed: therefore the order was quashed.

If a pauper be removed by order of justices, he cannot be removed to a third parish without appeal.

890. *Spitalfields* v. *Bromley*, *E. T.* 11 *Ann.* 18 *Vin. Abr.* 468. — *A.* was removed to the parish of *Stepney*, which did not appeal. Exception was taken that the removal ought to have been to the township of *Spitalfields*, for *Stepney* is divided into four townships, and the poor have been removed from one township to another in the same parish, and the statute takes notice of townships as well

An order of removal, though to a *wrong place*, is conclusive if unappealed from. See Rex v. Kirkby Stephen, *post*, pl. 894.

as parishes, and *Spitalfields* is a hamlet of *Stepney*. — PER CUR. If a person be removed to a wrong place, that place ought to appeal, and so ought *Stepney*, if it were a wrong place, or else the order will be *conclusive* upon them; but this is here a matter not in the record. Justices of peace are not obliged to take notice of the division of parishes into townships and villages, which maintain their own poor severally and distinctly: *Stepney*, upon an appeal, might have shown that the person did belong to the township of *Spitalfields*, which might have been a reasonable cause to discharge the order. Two townships within a parish are the same as two parishes, yet the churchwardens are overseers of the poor of the whole parish, though so divided, and have a superintendency over the whole township and villages.

An order of removal unappealed against is conclusive as to the fact of marriage, and even as to after-born children. S.C. 2 Stra. 1172. See Rex v. St. Mary, Lambeth, *post*, pl. 902.

891. *Rex* v. *Woodchester*, *M. T.* 16 *G.* 2. *Burr. S. C.* 191. — *T. H.* and his three daughters were removed from *N.* to *W.* The Sessions confirmed the order, and stated that before the three children were born, *H.*, their father, and *Hester* their mother, were removed in the year 1731 from *N.* to *W.*; and that the said order of removal was confirmed at the then next Sessions, *for want of an appeal thereto.* Upon the appeal against the present order of removal, the Sessions refused to permit the parish of *W.* to show that *T. H.*, previous to the removal in the year 1731, was married to another woman, and that she was still living. It was insisted that although the order unappealed from in 1731, was conclusive as to the settlement of *T. H.*, yet that the parish of *W.* were not thereby concluded as to the three children born afterwards. — LEE C J. It must be agreed that the original order confirmed by the Sessions is final as to the man and wife. Then the man and the children being again at *N.*, are, a second time, removed to *W.* as their settlement; and upon appeal, it is attempted to give evidence "that "the father and mother were not man and wife." But that must have been examined and inquired into by the two justices who made the original order; for they have removed these two persons as man and wife. It seems a very foreign intendment to suppose that the mother had any other right to the settlement, than as the wife of *H.* And if she was removed as his wife, her settlement has been determined. And the present inquiry relating to the children must depend upon her settlement as wife to *H.* — CHAPPLE J. An order of removal confirmed by the Sessions upon the merits, is conclusive against every body; and so it is also, if confirmed by them without appeal. This woman was removed as wife to *H.*; we cannot intend that she had any other settlement. It seems to me to be an estoppel. — WRIGHT and DENNISON Js. thought this exactly within the case of *New Windsor* and *White Waltham* (*a*), where it was determined, "that if a parish give a "certificate to a man and his wife, they are bound both as to the "man and wife, and also as to the children; and they cannot be "admitted to dispute the validity of the marriage." Now does not this confirmed order bind as much as the certificate binds? It is a judgment of a Court that had a proper jurisdiction; and is, therefore, as strong as the acknowledgment by a certificate. — STRANGE would have distinguished the certificate case of *New Windsor* and *White Waltham* from the present. — But THE COURT said they could see no distinction between them; and were satisfied that they ought not to be let in to controvert the question of

(*a*) *Ante*, pl. 781.

the marriage over again. The settlement of the children is *a derivative settlement;* it must and will depend upon the validity of the mother's marriage, and cannot be controverted without controverting the marriage, which has been already admitted.

892. *Rex* v. *Silchester*, *H. T.* 6 *G.* 3. *Burr. S. C.* 551. — *J. M.* and *G. W.* were sent by an order of two justices, from *N.* to *E.*, by the names of "*George Wise* and *Jane his* wife;" and there was no appeal from the order. The parish of *E.* afterwards finding that *Jane* was not the wife of *George Wise*, removed her, by original order, by the name of "*Jane Moor*, single woman," from *E.* to *S.*; from which the parish of *S.* appealed. Upon hearing the appeal, it was proved that she never was married to *George Wise;* and therefore the Sessions affirmed the order of the two justices. — THE COURT: If she was not his wife, it might have been controverted: but as they have neglected to appeal when they had a proper opportunity to show it, they are estopped to say so now. — And ASTON J. mentioned a case of one *Mary Broomhall*, where the parish of *Maidstone* having given a certificate calling her the wife of *Richard Burden*, they could not afterwards controvert it.

An order of justices unappealed from is *final*. S. P. Foley, 316.

893. *Rex* v. *Llanrhydd* (*a*), *H. T.* 10 *G.* 3. *Burr. S. C.* 658.—The paupers were removed from *L.* to *R.*, and were accordingly delivered to the officers of *R.;* who maintained them for some time after, at the joint expence of both parishes. Notice of appeal to the said order was served on the officers of *L.* by the officers of *R.;* and on the morning of the Quarter Sessions, previous to the filing of the appeal, the officers of *L.* consented to take the paupers back to their custody, without giving the parishioners of *R.* the trouble of appealing against such order. The parish of *L.* thereupon removed the paupers, by order of two justices, from *L.* to *D.*, who appealed thereto; and upon such appeal, the settlement of the paupers was proved to be at *D.*; but it appearing in evidence on the behalf of the parish of *D.*, that the order removing them to *R.* as aforesaid had not been appealed against, the Sessions were of opinion that the order of removal from *L.* to *D.* ought to be quashed; and it was quashed accordingly. It was contended, that though an order of removal submitted to and not appealed from is conclusive upon the non-appealing parish, as against all the world, yet that this rule is to be understood to relate only to a *subsisting* order, but not to a *deserted* one; and therefore the Sessions had made a great mistake in applying this general principle to the particular case of the order removing the paupers from *L.* to *R.;* which, being found to be wrong one, was by consent of both parties concerned in it abandoned and deserted, and the paupers taken back again by the parish in whose favour it was made; and was consequently at an end, and must be considered as if it never had existed. So that, upon the whole of the circumstances stated, *R.* was not concluded by it; although they had not actually pursued the appeal, of which they had given notice, and which they were ready to proceed upon, if *L.* had not consented to take back the paupers. It was contended on behalf of the parish of *D.*, that it was not in the power of private persons to put an end to the order for removing these paupers to *R.*, whilst an appeal was thus going on against it. The order removed them to *R.*, and *R.* not having appealed, is concluded, as against all other

An order of removal *deserted* by the parish in whose favour it is made, by their agreeing to take the pauper back, is not on being unappealed from, conclusive on the parish to which the pauper was removed.

(*a*) See Rex v. Diddlebury, *post*, pl. 907.

parishes, to dispute their belonging to *R.* — LORD MANSFIELD: The order was made in favour of *L.*; *L.* gave it up, and consented to take the paupers back, without giving *R.* the trouble of appealing against it. May not a party give up a judgment intended for his own benefit?

An order of removal to a parish consisting of several townships is binding on the township to which it is delivered if not appealed from.

(a) See Rex v. Swalcliffe, *post*. pl. 896.

894. *Rex* v. *Kirkby Stephen*, *T. T.* 10 *G.* 3. *MSS.* — *W. B.* and his family were removed in *August* 1769, from *K.* to *W.* Upon appeal the case stated by the Sessions was as follows: The parish of *K.* consists of ten different townships, which maintain their poor separately, and have separate overseers (*a*), of which townships *K.* and *W.* are two. The pauper was settled in *W.*, by renting a farm of 25*l.* a year for four years, and by residing upon it upwards of three years, and in the fourth year went to assist his sister, who was a shopkeeper at *K.*, and lodged there with her upwards of forty days, during which time he went daily to manage and occupy his farm aforesaid. Afterwards he went to *Newport* in the county of *Salop*, married there, and had several children; and becoming chargeable, was removed from thence, by order of two justices of the county of *Salop*. In *February* 1768, one of the overseers of *Newport* brought the pauper and his family, with the said order, to *T. Petty*, then overseer of the said township of *K.*, and delivered the said order to him. *Petty* said, that the pauper belonged to the township of *W.*, and that he had rather the pauper belonged to the township of *K.*, because he (*Petty*) had a larger estate in *W.* than in *K.*; and then he went away, leaving the order with the overseer of *Newport*, and the pauper. Notice was given to the overseers of *K.*, and to the pauper, to produce the original order; but that not being produced, the Sessions admitted a copy written and attested by the pauper to be read: it was directed to the churchwardens, &c. of the parish of *Newport*, &c., and to the churchwardens, &c. of the parish of *K.* &c., and the settlement of the paupers is adjudged to be in the parish of *K.* It appeared also, that about a week after the time that the pauper was brought to *K.*, he went to *W.* and delivered the original order of removal from *Newport* to *John Haswell*, who, he had been informed, was overseer of *W.*; who, having read the order, said he could do nothing in it till there had been a parish-meeting, and returned it to the pauper. Some time afterwards the pauper was applied to by an inhabitant of *W.* for a copy of the order of removal, which he accordingly delivered to him, and the copy was admitted as evidence in Court. It appeared also, that the pauper remained in *K.*, and was maintained by his sister, for near a year and a half, in the township of *K.*, when his sister dying, he asked relief of the township of *K.* It did not appear that any appeal had been made from the order of removal from *Newport*, but the pauper had the order from the time that *Petty* left it, and was carried with it, by the overseers of the township of *K.*, before two justices of peace, when the said order was either left with the justices, or delivered to *Thompson*, one of the overseers of the township of *K.*, the pauper not having since seen it. The Sessions quashed the order of removal from the township of *K.* to the township of *W.* — LORD MANSFIELD: This case resembles very much that in *Viner* of *Rex* v. *Stepney*. (*b*) The township of the parish which is named in the order, and to which the pauper is brought, ought to appeal. The justices are not obliged, nor perhaps is it in their power, to take notice of the divi-

(b) Spitalfields v. Bromley, *ante*, pl. 890.

sions of parishes. The statute 13 & 14 *Car.* 2., which takes notice of the divisions of parishes, directs the removal of paupers, not to such divisions, but to such parishes. It would introduce extreme confusion and inconvenience if townships might lie in this manner. There does not exist such a place as the parish of *K.* for the purpose of maintaining the poor, and *K.* could not get rid of this order but by appeal: an order unappealed from is undoubtedly final.—The other Judges concurring, the order of Sessions was confirmed.

An order removing a woman as *the wife of A.* is, if unappealed from, conclusive against the parish as to the settlement of *A.*; for by calling her *his wife*, it imports that the removal was to *his* settlement. S. P. Rex v. Towcester, *post*, pl. 898.

895. *Rex* v. *Hinxworth*, *H. T.* 18 *G.* 3. *Cald.* 42. — The paupers, *S. G.*, the wife of *J. G.*, and their five children, were removed, by an order, dated 17th *June* 1776, from *C.* to *H.*; but to this order the parish of *H.* neglected to appeal. By another order, dated 30th *October* 1776, *J. G.*, *S.* his wife, and their five children, were removed back from *H.* to *C.*; and the parish of *C.* appealed against this last order, insisting, that as the former order was not appealed against, it was conclusive as to the whole family; but the Sessions, after hearing evidence as to the husband's settlement, confirmed it as to *J. G.*, and discharged it as to his wife and children. The wife and children, however, soon afterwards returned to their husband and father at *C.*; and by another order, dated 20th *January* 1777, the five children were removed from *C.* to *H.* The parish of *H.* appealed from this order, and the Sessions confirmed the order, except as to two of the children, who as nurse-children were not removable. It was admitted, that the question in this case was, to what extent the first order removing the mother and her five children to *H.* was conclusive against that parish? And it was contended that as the husband, *J. H.*, was not removed by the first order, *his* settlement was not fixed at *H.* by not appealing against the order, but that it was open to the Sessions on the appeal against the second order to inquire into the fact of the settlement. But on the other side it was insisted, that as *S. G.*, was by the first order removed, as the wife of *J. G.*, it must be implied, that she was removed to her husband's settlement, and that therefore the order precluded the parish of *H.* from saying that *J. G.* was not settled in that parish. — LORD MANSFIELD: There is nothing at all in this case. The first order unappealed from is conclusive. The parish of *H.* neglected to appeal at the time they were aggrieved, and their being too late now is their own fault. — The first order, dated 17th *June* 1776, was affirmed, and the two subsequent orders discharged. (*a*)

(*a*) The same point was decided in Rex *v.* Leigh, M. T. 19 G. 3. — Two justices, by order, dated April 25, 1778, removed Alice Cooper, wife of Richard Cooper, and their four children, from Ewell to Leigh; and the Sessions, on appeal, *quashed* the order. Two other justices, by order, dated July 22, 1778, removed Richard Cooper, Alice his wife, and their four children, from the same parish to the same parish; and the Sessions, on appeal, *confirmed* the order. These orders being removed by *certiorari*, and it not being suggested that any act had been done in the interval of the two orders of the justices to vary the right of settlement of the paupers, *Rous* moved to quash the last order of justices, and the order of Sessions confirming it, upon the ground that an order *quashed* on appeal is as *conclusive* between the parties as an order *confirmed* is *conclusive against the world:* — and *Wallace*, upon the authority of the above case of Rex *v.* Hinxworth, acknowledged that these orders could not be supported, and both orders were accordingly quashed.

An order of removal directed to a place that has no overseers, is not conclusive though unappealed from. S. C. Cald. 248. (a) *Ante*, pl. 894.

896. *Rex* v. *Swalcliffe*, *H. T.* 23 *G.* 3. EDITOR'S *MSS.* — The paupers, *T. H.* and *M.* his wife, were removed in the month of *January* 1782, from *S.* to *A.* There was no appeal to the next Sessions fron this order. But the pauper being likely to become chargeable to *A.*, they were removed back to *S.* It was contended, that the first order, being unappealed from, was conclusive; and the case of *Rex* v. *Kirkby Stephen* (*a*) was cited. But it was said, on the other side, that an order unappealed from is only conclusive, when directed to a place to which a removal can be legally made; but that in the present case it appeared that *A.* was only a large village, which maintained its poor in common with the parish of *W.*, and had no separate overseers or other officers to receive the pauper; and that *W.* could not possibly appeal in this case; for not being parties, they were not entitled to interfere or to be heard. — LORD MANSFIELD: This was in fact no removal at all, and being a mere nullity cannot become the subject of appeal; and to make an order unappealed from conclusive, it must be a legal order.

An order removing a *certificate-person* from a third parish to the *parish to which he was certified*, unappealed from, is conclusive against that parish on a subsequent removal to *the certifying parish.*

(*b*) *Post*, pl. 917.

(*c*) But the first removal in that case was as well as the second, to the certifying parish.

897. *Rex* v. *Ealing*, *M. T.* 25 *G.* 3. EDITOR'S *MSS.* — In the year 1733, *a certificate* was granted by *E.* to the parish of *B.*, acknowledging *J. C.* to be their inhabitant legally settled in *E.*, under which certificate he resided at *B.*, where his son *T. C.* was born. Some time afterward *A. C.*, the pauper, wife of *T. C.*, went with her children to reside in the parish of *St. M.*, from which they were removed in *September* 1779, as likely to become chargeable, by an order of two justices, to *B.*, as the place of their last legal settlement, from which order *B.* did not appeal. The pauper and her family remained in *B.* till the 2d of *August* 1783, when the pauper was removed by an order of two justices under the certificate from *B.* to *E.* — The Session, on appeal, confirmed the order. — WILSON and FANSHAW, in support of the orders, cited *Rex* v. *Osgathorpe* (*b*), which was a removal of a *certificate-person* after a former order of removal quashed, because he was not then actually chargeable. (*c*) They said, the first order of removal here was because "likely to become charge-"able," whereas *B.* could not remove to *E.* till actually chargeable, and therefore ought not to be bound by that order. — LORD MANSFIELD: The order of removal from *St. M.* to *B.* is unappealed from and conclusive. — Orders quashed.

An order removing *a wife*, if unappealed from, is conclusive as to the husband's settlement, although he is not in fact settled in the parish. S. C. Cald. 497.

898. *Rex* v. *Towcester*, *H. T.* 25 *G.* 3. EDITOR'S *MSS.* — Two justices, by an order dated the 31st *March* 1784, removed *M. C.* and her four children from *T.* to *H.*, as to the place of her last legal settlement. By another order, dated 27 *May* 1784, two other justices removed *R. C.* from *H.* to *T.* — The Sessions, on appeal, confirmed the last order, and stated the following case: On the 17th of *September* 1773, *R. C.*, *M.* his wife, *J.* their son, aged 12 years, *M.*, aged eight years, *S.*, aged six years, and *J.*, their son, aged about three years, being inhabitants legally settled at *H.*, were duly certificated to the parish of *T.*: they removed to *T.*, and resided under the certificate; and, during such residence, *R. C.*, the husband, gained a settlement by renting 10*l.* a year: afterwards, in absence of *R. C.*, *M. C.* and four of her children, not mentioned in the certificate, but born under it, having become chargeable to *T.*, were removed from *T.* to *H.*, by the order of 31st *March* 1704, and which order was not appealed from: afterwards *R. C.*, the husband, coming to his family at *H.*, was removed

from *H.* to *T.*, by the order of 27th *May* 1784. — Mr. DAYRELL obtained a rule to show cause why these orders should not be quashed, and cited the case of *Rex* v. *Hinxworth* (*a*); but as no one appeared to support them, the rule was made absolute.

(*a*) *Ante*, pl. 895.

An order of removal unappealed from is only conclusive to those who are mentioned in it; so that if only the father and mother are removed thereby, the question relative to the settlement of their children is still open. But see Rex v. St. Mary Lambeth, *post*, pl. 902.

899. *Rex* v. *Southowram*, *T. T.* 26 *G.* 3. 1 *T. R.* 353. — The pauper, *E. B.*, widow, and her three children, were removed from *S.* to *N.* On appeal to the Sessions, they state, that it appeared from the evidence of *W. B.* (the father of *J.*, the late husband of the pauper *E*), that the said *W.*, *J.*, and also the father and grandfather of *W. B.*, were born and settled at *H.*, where *J. B.* was likewise born; but it did not appear that *J.* had done any act to gain a settlement; that, on the 6th of *April* 1774, two justices made an order for removing *W. B.* and *E.* his wife (*but not any of their children*) from *H.* to *N.*; which order was duly served upon the then overseers of the poor of *N.*, who thereupon received the two paupers, and did not appeal against the order; that some years before, and at the time of the removal of *W. B.* and his wife, *J.* was married to *E.*, one of the paupers, by whom he had the three other paupers; and from the time of his marriage until his death lived at *H.*, in a dwelling-house which he rented himself separate and independent of his father, and was not removed by or mentioned in the said order, nor was then any part of his family. — PER CURIAM: The order of removal unappealed from is couclusive as to the father and mother, but not as to the son, because he is not mentioned in it; and the Sessions have expressly found that the son was settled at *H.*

After an order of removal unappealed from, a new settlement can only be gained by some act altogether subsequent to the removal.

900. *Rex* v. *Kenilworth*, *T. T.* 28 *G.* 3. 2 *T. R.* 598. — The pauper, *T. B.*, was born and settled in the parish of *K.* On the 10th *May* 1765 he was hired to *T. C.* of *B.* for one year. On the 10th *May* he entered into the service, and continued in the same in the parish of *B.* until the first day of *April* 1766, when he was taken up on a charge of bastardy, and was married the next day. His master did not make any complaint against him, nor discharge him from his service. On the 3d of the same month of *April* 1766 the pauper was removed, by an order of removal, from *B.* to *K.*, and was delivered with such order to the officers of the last-mentioned parish, and continued under such order in the same parish until the 7th of the month of *April* 1766, and then returned back to *B.* into his master's service, who willingly received him again; and the pauper continued with his master in *B.* in such service, until the end of the year for which he was hired to him, and received his full year's wages. The order of removal of the 3d of *April* 1766 was not appealed against. — BULLER J. There is no proposition in the law of settlements more clear than this, that *an order of removal unappealed against is conclusive against all the world*; and this is so clearly and so universally established, that it ought never to be impeached. At the same time the rule is, that the order of removal, though unappealed from, does not at all affect a subsequent settlement. Then the question here is, Whether the pauper gained any settlement in *B.* subsequent to the order of removal? Now in this case he did no act by which he could gain a settlement in *B.* after the order of removal. The circumstances of the pauper's having been apprehended on a charge of bastardy, and of his marriage, I lay entirely out of the question; for it was competent to the master to receive him again after he was discharged out of custody, if he

pleased; and the servant might have served his master after he was married as well as before. But what I rely on is this, that after the order of removal, unappealed from, the pauper could not legally return to the parish from whence he had been removed; it would have been a crime in him to do so; and if he had been indicted for such a disobedience of the order, it would have been no defence to him to have urged that he returned for the purpose of completing his contract. (*a*) The order of removal put an end to the service; and if he could not return without committing a crime, he could not be liable to an action by the master for not completing the contract. There is a great difference whether the party is disabled by his own act, or by the act of law, from performing his contract: he is answerable for the former; but if the law intervenes, and says he shall not complete the contract, it puts an end to the contract. Now in this case the pauper returned after the order of removal to the parish of *B.*, where he served a month; but that could not gain him a settlement there; for the act subsequent to the order of removal, by which he was to gain a settlement, should be complete in itself. — GROSE J. I doubt whether the party was liable to be removed; but there having been an order of removal unappealed from, it is decisive; and he has done no subsequent act to gain a settlement.

(*a*) Rex v. Fillongley, *infra.*

Where a person renting and residing on a tenement of 10*l.* a year in A. was removed to B. by an order of two justices, and afterwards returned to the same tenement without making any new contract, and resided there more than forty days, he thereby gained a settlement, though the order of removal was unappealed against; for the contract was not thereby dissolved.

901. *Rex* v. *Fillongley*, *M. T.* 29 *G.* 3. 2 *T. R.* 709. — *J. G.*, on the 1st *January* 1786, and for some years before, rented and resided on a tenement in *F.*, of the yearly value of 10*l.* and upwards, and continued thereon until the 29th *April* in the same year, when he was removed, by an order of removal, from *F.* to the hamlet of *K.*; and on the same day on which he was delivered with the said order of removal, he returned back to the tenement in the parish of *F.*, where he resided without making any new contract with his landlord for the same, and without any interruption, for about three quarters of a year, and then was removed by the present order to the hamlet of *K.* An appeal against the order of removal of the 29th *April* 1786 was entered, but was not prosecuted. — LORD KENYON C. J. This case is abundantly too clear to raise any serious doubt. Nothing can be better established, than that the order of removal unappealed from is conclusive as to the pauper's settlement at that time; but there is nothing in the order which prevents the pauper's return, provided he does not return in a state of vagrancy. It is also clear, that it is not in the power either of the two magistrates who remove the pauper, or of the justices at their Sessions, on an appeal, to put an end to a contract between the parties respecting the taking of a tenement. As far as respects the settlement of the persons removed they may determine, but no farther. And that distinguishes this case from *Rex* v. *Kenilworth* (*b*); that was a case of master and servant; and there the justices have a power of putting an end to the contract. But here, at the time of the first removal, the justices had no right to put an end to the contract, nor can we see on what ground the pauper was removed; for it is stated, that he *rented and resided on a tenement of* 10*l. per annum*, which infers a contract. That contract was most clearly not dissolved by the adjudication of the justices, and then the pauper cannot be considered as returning in a state of vagrancy. And though he did not return under a new contract, yet that was not necessary, for the old contract re-

(*b*) *Ante*, pl. 900.

mained; and then by residing at *F.* 40 days after the removal he gained a settlement. It has been said, that the court may presume fraud in the first taking; but there is no rule better established, than that fraud is never to be presumed; and I believe, in a case sent for the opinion of this Court which was pregnant with fraud, they would not presume fraud because it was not stated. — ASHHURST J. The first order of removal could not possibly rescind the prior legal agreement between the pauper and a third person. And though an order is conclusive as to the settlement at the time when it was made, that is merely technical, and so far we are bound; therefore in this case it must be taken that the pauper had not gained a settlement in *F.* at the time of the first removal. But when he returned, it was under the old contract, which had never been rescinded. Then he did not return as a vagrant, but he came to the parish of *F.* to settle on a tenement of 10*l. per annum*, and he there acquired a settlement by a residence for more than 40 days. It is not necessary to determine here what would have been the effect of his residing in *F.* for a shorter space of time than 40 days after the first order of removal. The case cited from *Caldecot* (*a*) does not apply to the present; for it is there stated, that the pauper resided on the premises against the consent of the landlord, but in this case the pauper resided under a contract. — GROSE J. This case is distinguishable from that of *Rex* v. *Kenilworth* (*b*), for the reasons given. I think, if we could proceed on supposition, that the real transaction was this: After the appeal against the first order was made, the justices discovered that he was wrongfully removed, and then they agreed that he should be at liberty to return to *F.* on his dropping the appeal. However, we are to determine on the facts stated; and, for the reasons given, I am of opinion, that the contract was not dissolved by the first order, that the pauper had a right to return to the parish of *F.*, and by residing there more than 40 days he gained a settlement in *F.*

(*a*) Rex v. St. Michael's Bath, *ante*, pl. 629.

(*b*) *Ante*, pl. 900.

902. *Rex* v. *St. Mary, Lambeth* (*a*), *E. T.* 36 *G.* 3. 6 *T. R.* 615.— The pauper, *Elizabeth*, was in 1784, by an order of two justices, removed with, and as the wife of, a man to whom before that time she had been married, and who at the times of such marriage and removal passed and was known by the name of *W. Tarr*, from *S.* to *H.*, which order remained unappealed from. The appellants offered to give in evidence that the man's real name was *W. Haverfield*, and that he was married to another woman by that name before his marriage with the pauper *Elizabeth*, which other woman was still living, and ready to be produced in court; such evidence was objected to by the respondents, who contended, that the parish of *H.* having received *Elizabeth* as the wife of *W. Tarr*, and not having appealed against the above order, ought not to be permitted to dispute her marriage; which objection being overruled by the Sessions, it appeared by evidence produced, that the real name of *William* was *W. Haverfield*, and that before his marriage with *Elizabeth*, and removal with her from *S.*, he was lawfully married to one *S. Gale*, who is still living; and that after the removal from *S.* they left *H.* and went and cohabited in *St. Mary, Lambeth*. The paupers *Sarah*, *William*, and *Louisa* were born of the pauper *Elizabeth* during such cohabitation; and had done no act to gain a settlement. — THE COURT: The cases *Rex* v. *South-*

An order of removal unappealed against is conclusive not only on the parties removed, but also as to all derivative settlements under them.

(*a*) See Rex v. Catterall, *post*. pl. 908.

owram (a) and *Rex* v. *Lubbenham* (b), do not in the least affect the authority of *Rex* v. *Woodchester* (c), which was a direct decision in point; it being there established that an order of removal unappealed against is conclusive, not only on the persons removed, but also on all derivative settlements from them.

(a) *Ante*, pl. 899.
(b) *Ante*, pl. 741.
(c) *Ante*, pl. 891.

An order of removal though unappealed from is not conclusive, if it do not distinctly appear upon the face of it, that the justices had jurisdiction.

903. *Rex* v. *Chilvers Coton*, *H. T.* 39 *G.* 3. 8 *T. R.* 178. — *W. Fennell*, was born about 55 years ago in *S.*, but was settled in *C.* In 1779, he married his present wife in *B.*, where he then resided. They were afterwards removed to *S.* by the following order: "To the churchwardens and overseers of the poor of "the parish of *B.*, in the county of *Warwick*, and to the "churchwardens and overseers of the parish of *S.*, in the "county of the city of *Coventry*; whereas complaint has been "made by you the churchwardens and overseers of the poor of "the said parish of *B.* unto us whose hands and seals are here-"unto set, two of His Majesty's justices, &c. *for the county afore-"said*, that *W. Fennell* and *E.* his wife," &c. &c. The order was dated 16th of *March* 1779; but there was *no county mentioned in the margin* of the order, and against this order there was no appeal. Afterwards in *May* 1779, a certificate was granted by the parish of *S.* to the parish of *B.*, acknowledging the said *W. Fennell* and *E.* his wife to be settled in *S.*, but at the time of granting this certificate no settlement had been gained in *S.*, unless the above order of removal from *B.* to *S.* had conferred one: but the pauper *W. Fennell*'s settlement had always continued in *C.* It was contended that the former order was absolutely void in itself, because it does not appear that the justices who removed had any authority to make it. It is directed to the parish-officers of two parishes lying in different counties, and it is only said in the order that the justices who removed were justices for the *county aforesaid*, without saying for which of the two counties; and unless they were justices for the *county of Warwick*, they had no jurisdiction to make the order (d). — LORD KENYON C. J. It should appear on the face of the order that the justices who made it had jurisdiction; if they had jurisdiction, every fair presumption will be made that they decided rightly: but if they had not, the proceeding is a nullity. It is said, however, that the parish of *S.* ought not to be permitted at this distance of time to object to the order: but there is a maxim that *quoad ab initio non valet tractu temporis non convalescet*. And as this order was void at the time when it was made, because it does not appear that the justices who removed had any jurisdiction, it cannot have become a valid order by the time that has since elapsed. The general proposition indeed, that an order of removal unappealed against is conclusive on the parish to which the removal is made, cannot be shaken: but it must be understood as part of that proposition that the order is not a nullity, but was made by two justices having jurisdiction to make it. The case of *Rex* v. *Stepney* (e) is, I think, decisive of the present. — GROSE J. In *Rex* v. *Great Bedwin* (g) it was holden,

(e) *Ante*, pl. 799.
(g) *Post*, pl. 934.

(d) Qu. If the order in question might not be read so as to be considered as a valid order? It is directed to the parish-officers of Bedworth in *the county of Warwick*, and to the parish-officers of Sow in *the county of the city of Coventry*; then the subsequent words, "for the *county* aforesaid," may refer to "the *county* of Warwick," and not to "the *county of the city of* "Coventry."

that the Sessions cannot amend an order of removal in matters of substance. Then if the former order made in 1779 could not have been amended by the Sessions on an appeal, it purports to be an order made by two persons who, it does not appear, had jurisdiction to make it. The only way in which this difficulty can be obviated is by intending that they had jurisdiction: but in *Rex* v. *Stepney*, Lord *Hardwicke*, Mr. J. *Page*, and Mr. J. *Probyn* all said that such an intendment cannot be made. This, then, must be taken as an order made by two persons who had no jurisdiction, and, consequently, it is not conclusive on the parish of *Sow* to which it was directed. — LAWRENCE J. expressing some doubt on the subject, the case was not then finally decided. — But now LORD KENYON C. J. said, We have considered the cases cited, and are of opinion, on the authority of *Rex* v. *Stepney* and *Rex* v. *Great Bedwin*, that the former order was a nullity, and though it was not appealed against, it is not conclusive on the parish of *Sow*. — LAWRENCE J. I was struck with one of the arguments at the bar, that the Sessions might have inquired on an appeal against the original order, whether the justices who made it were of one county or the other; and on that I hesitated at first. But 36 *G.* 2. *c.* 27. gives an answer to that argument; for it might as well have been argued before that act passed, that the Sessions might have inquired under the 5 *G.* 2. *c.* 19. whether or not the justices who made an order of removal were or were not of the *quorum*; and yet the legislature thought it necessary to pass the 26 *G.* 2. *c.* 27., enacting that no order made by two or more justices of the peace "which doth not express that one or more of the justices is or "are of the *quorum*, shall be set aside or vacated for that defect "only;" which would not have been necessary if the justices at the Sessions could have inquired into and amended such a defect under the 5 *G.* 2.

904. *Rex* v. *Rudgeley* (*a*), *T. T.* 40 *G.* 3. 8 *T. R.* 620. — Two justices by an order removed *Emanuel S.* and *Elizabeth* his wife, from *A.* to *R.* On appeal the Sessions confirmed the order, and stated the following case for the opinion of this Court: By a certificate dated the 4th of *March* 1727, directed to the churchwardens and overseers of *A.*, the then officers of the parish of *R.* acknowledged *John Smith*, *Joyce* his wife, and his son *Emanuel S.* (the pauper), then about three months old, to be inhabitants legally settled in the parish of *R.* About 40 years ago the pauper *Emanuel S.* was married in *Gloucester* to *E. Gettens*; they parted in the year 1787, and since that time never saw or heard of each other until after the removal next mentioned. By the following order of two magistrates the said *Elizabeth* was removed on the 9th of *November* 1799 to *A.* [Here was set forth an order signed by two magistrates for removing her by the name and description of "*Elizabeth Smith*, widow," from the parish of *St. G.*, to *A.*] There was no appeal against the lastmentioned order. — GROSE J. The question is, Whether or not the former order by which the pauper's wife was removed to *A.*, and against which there was no appeal, be conclusive as to the settlement of the persons removed by the present order? Nothing is more convenient in every part of the law than certainty, and especially in cases of this kind, when it is considered that those who are to sit in judgment at the Sessions are, generally speaking, not members of our profession;

If a feme covert be removed by an order of two justices from A. to B., describing her as "widow," and there be no appeal against it, it is conclusive not only as to her settlement but as to that of her husband also.

(*a*) See Rex v. Catterall, *post*, pl. 908.

it is, therefore, of great consequence that we should abide by what has been already decided on settlement cases. The general rule that an order of Sessions unappealed against is conclusive seems to be admitted. The cases alluded to prove it; they also show that the same rule extends to an order removing a married woman. It is said, however, that though this rule was applied in two of the cases cited to a woman removed as a *feme covert*, it ought not to be extended to a case where the woman removed is not described as a married woman, and that the case of *Rex* v. *Towcester* (*a*) where it was so extended is not to be considered as of any authority because it was not argued at the bar: but I rather believe that the counsel who were to have argued the case of *Rex* v. *Towcester* thought the point so clearly settled that they had no hopes of inducing the Court to depart from the opinion which they had given in the two prior cases, and therefore they abandoned it. Then if we were to determine in this case that the former order of removal was not conclusive, we should shake the authority of all the decisions on this subject. It was objected by the counsel who argued in support of the order of Sessions, that the former order gave no notice to the other parish that the husband's settlement would be litigated under it, because she is only described as "widow" generally, without saying of whom she was the widow. But this imported that she was removed to a parish where her husband had gained a settlement; at least it put that question in issue; therefore it behoved the parish to which the removal was made to inquire how that settlement was gained. This would have been an object of inquiry on an appeal against that order. But as that parish did not then litigate the question, we are bound according to all the authorities to determine that the former order of removal is conclusive, and that not as to her only, but as to the husband likewise. The consequence is that this rule must be made absolute. — LAWRENCE J. The counsel in support of the order of Sessions admitted that the case of *Rex* v. *Hinxworth* (*b*) must be considered as an authority as far as it professes to decide, but they attempted to distinguish that case from the present, by saying that the order in that case conveyed a notice to the parish to which the removal was made, that it involved in it the husband's settlement, and they seemed to admit that if a similar notice had been conveyed in the former order in this case it would have been sufficient. Now I think that this order did upon the face of it point out that the husband's settlement might come in question under it; for the woman was removed *as a widow*, in which case the presumption is, that she was removed to the place where her husband was settled. Therefore, that parish either did then inquire as to the husband's settlement, and were satisfied that there was no ground for an appeal, or they made no inquiry on the subject, but acquiesced under the order of removal: but in either case I think on the authority of the former cases that the former order is conclusive as to both these parties. — LE BLANC J. I am also of opinion that the former order of removal is conclusive as to the settlement of both the persons now removed. The general rule, that an order of removal unappealed from is conclusive, is admitted; it is likewise admitted that an order of removal of a wife, as such, is conclusive not only as to her but as to her husband. Then the question here is, Whether or not the removal of a wife

(*a*) *Ante*, pl. 898.

(*b*) *Ante*, pl. 895.

by a wrong addition makes any difference in this respect? And with regard to that point, the cases of *Rex* v. *Silchester* and *Rex* v. *St. Mary, Lambeth* (*a*), show that an order of removal unappealed from is conclusive, though the party be removed by a wrong addition; for in both those cases the woman was removed as the wife, though, in fact, she was not the wife; and yet it was holden that the parties were precluded by the orders from disputing the settlements again upon subsequent removals. The result of all the cases on the subject seems to be this; an order of removal unappealed against is conclusive; an order of removal of a woman, though not as wife, is conclusive as to the settlement of the husband as well as the wife; and the circumstance of the party being removed under a wrong description does not take the case out of the general rule.— PER CURIAM. Both orders quashed.

(*a*) *Ante*, pl. 892, 902.

905. *Rex* v. *Binegar*, *E. T.* 46 *G.* 3. 7 *East*, 377. — On the appeal by the parish-officers of *B.*, against an order of two justices for the removal of *Elizabeth Savage*, otherwise *Walters*, by the name of *Elizabeth Walters*, singlewoman, from *M.* to *B.*, the order of removal was affirmed by the Sessions, subject, &c.: On the 25th of *April* 1798, by an order of two justices made on the complaint of the parish-officers of *K.*, it was complained and adjudged in the following words, viz. "That *John Savage*, la- "bourer, and *Betty his wife* (the said *Betty* being the pauper "above removed), lately came and intruded themselves into the "said parish of *Kilmersden*, endeavouring there to settle as in- "habitants thereof, contrary to law, not having any way acquired "a legal settlement therein, and are likely to become chargeable "thereto, we do, upon due examination, adjudge the said com- "plaint and premises to be true: and we do further, *upon the* "*examination of the said* Betty, *the wife of the said* John Savage, "taken upon her oath, adjudge that the said *John Savage*, and "*Betty* his wife, *were* last legally settled in the said parish of *M.*" And the said *Betty* was removed from *K.* to *M.*; but against this order of removal there was no appeal. On the 20th of *July* 1799, by another order of two justices, made on the complaint of the parish-officers of *W.*, in the said county, it was complained and adjudged in the following words; viz. "That *Elizabeth Savage* "(being the said pauper) lately came to inhabit in the said parish of "*Wellow*, contrary to law, not having any ways gained a legal set- "tlement there, &c.; and that the said *Elizabeth Savage* is actually "become chargeable to the said parish of *W.*; we the said jus- "tices, upon due examination of the said complaint and premises, "and also upon the examination of the said *Elizabeth Savage*, "upon her oath before us, and upon due consideration by us had "in the premises, do adjudge the same complaint and premises to "be true; and we do likewise adjudge that the said last lawful "settlement of her the said *Elizabeth Savage* is in the said parish "of *M.*" And she was therefore removed from *W.* to *M.* And against this order, likewise, there was no appeal. At *Lady-day* 1803, the said *Elizabeth* hired herself for a year, at the wages of 4*l.* 4*s.*, as a dairy-maid to *J. Brooks* of *B.*, and served with him in that parish for 16 months. The said *John Savage* is still living. After *Elizabeth* left the service of *Brooks* she returned to *M.*, and became chargeable to that parish. In *May* last *John Savage* was committed to the house of correction for having run away and left

An order of removal of J. S. *and* B. *his wife*, made *upon the examination of the wife*, adjudging that they *lately* came into the parish of K. and *are* likely to become chargeable to it, and *were* last legally settled in M., is good upon the face of it, and conclusive upon the parish of M. as to the marriage and settlement of the husband and wife; so that upon a subsequent removal of the wife, describing her as B. S., *single woman*, from M. to B., M. cannot show in evidence that the marriage was null and void.

the said *Elizabeth*, therein called *his wife*, so chargeable, until the next Quarter Sessions held for the said county in *July* last, when the charge in the said commitment being duly proved to the Sessions upon oath, in the presence of the said *John Savage*, to be true, the Court adjudged *Savage* to be a rogue and vagabond, and a male upwards of 12 years of age, and ordered him to be detained in the house of correction for three days, and that before he was discharged from thence he should be sent to be employed in His Majesty's service by land in His Majesty's 40th regiment of foot. But *John Savage* hath never contributed to the maintenance of the said *Elizabeth*. The respondents produced evidence to the Court that a marriage solemnized between the said *John Savage* and the said *Elizabeth*, before either of the said orders of removal were made, was a nullity, and the nullity of such marriage was not disputed. The question for the opinion of the Court was, Whether or not the respondents were estopped either by the former orders of removal, or by the adjudication of the said *John Savage* to be a vagrant, for running away and leaving the said *Betty*, who is in such adjudication considered as *his wife*, from giving any evidence whatever to prove the said marriage a nullity? — GARROW and TOPPING in support of the order of Sessions. The second order which removes *Elizabeth Savage*, treating her as a single woman, may be laid out of the case; for it does not necessarily upon the face of the order include the judgment of the justices upon the question of the marriage, and *non constat* that it was in issue before them. And as to the order of vagrancy, it is a mere *ex parte* proceeding, and cannot conclude the fact of marriage. The question then reverts to the validity of the first order of removal; for if that be bad upon the face of it, it cannot conclude the parish; as it must be admitted that it would if good, according to *Rex* v. *Silchester* (*a*), and *Rex* v. *Rudgeley*. (*b*) Now here the order was illegal on the face of it; 1st, because it is a removal of the husband and wife, stated to be made upon the examination of the wife only, who can only know the fact of her husband's settlement by hearsay from him. — [LORD ELLENBOROUGH C. J. That does not follow. She may know the fact as well as any other witness.] 2dly, It does not appear that the parties ordered to be removed were within the jurisdiction of the removing magistrates, without which they had no jurisdiction. It is only stated that the paupers *lately* came into the parish of *K.*, not that they were *then* in the parish, at the time of the order made. — [LORD ELLENBOROUGH C. J. The order states, and the magistrates adjudge it to be true, that the paupers *are likely to become chargeable* to the parish, which could not be if they were not in the parish at the time.] 3dly, There is no adjudication of a *present* settlement; only that the paupers *were* last legally settled in *M.* [LORD ELLENBOROUGH said, that it referred to the time of the complaint made, and the Court could not intend an intermediate settlement between the hearing of the complaint, and the making the order of removal.] — THE COURT all concurred in quashing the order; considering the first order of removal as good upon the face of it, and, according to *Rex* v. *Silchester*, conclusive upon the question of the marriage, which was involved in the judgment of the justices. — Orders quashed.

(*a*) *Ante*, pl. 892.

(*b*) *Ante*, pl. 904.

An order of removal executed

906. *Rex* v. *Corsham*, *T. T.* 49 *G.* 3. 11 *East*, 388. — Removal from *M.* to *S.*, order confirmed, subject, &c. — The pauper being

born at *G.*, and having acquired a settlement in *C.*, was in 1807, removed by order from *D.* to *G.*; against which order no appeal was made by *G.* The pauper has done no act to gain a settlement in *C.*, or elsewhere, since the time he was so removed to *G.*; and has since the time of such removal been frequently relieved by *G.* — LORD ELLENBOROUGH C. J. If the pauper were settled in *G.*, at the time of the former order made, could not *C.*, as well as all other parishes, have taken advantage of that upon a question of settlement? Now the order of removal to *G.*, which was submitted to, is the most authentic proof of his settlement being there at the time of the order made; and we must intend every thing in support of that settlement so adjudged. It is in effect a statutable certificate, if I may so express myself, that the pauper was then settled at *G.*: the statute gives him a settlement there; and the fact stated by the Sessions of a prior settlement in *C.* is immaterial. — LE BLANC J. If the former order were not conclusive as to the settlement being in *G.* at the time, *G.* would escape the effect of it altogether; for this order would be conclusive upon *C.*, so as to prevent *C.* from removing to *G.* — Orders quashed.

and unappealed against, is conclusive as to the settlement of the pauper at the time of such order, even as between third parishes no parties to the former order.

907. *Rex* v. *Diddlebury*, (*a*) *E. T.* 50 *G.* 3. 12 *East*, 359. — Removal from *M.* to *D.* Order confirmed, subject, &c. In *July* 1809, two justices removed the pauper from *M. W.* to *L. S.*, and she was accordingly received by the parish-officers of *L. S.*, and maintained by them there for five weeks at the expence of *L. S.* parish. On the 15th of *August* following, doubts having been entertained whether the order made in *July* preceding could be supported by evidence, a meeting was had between the parish-officers of *M. W.* and the parish officers of *L. S.*, who finding the account given by other witnesses was different from that given by the pauper, on whose evidence the first order of removal to *L. S.* had been made; and being of opinion that it could not therefore be supported, they mutually agreed to cancel that order, *which they accordingly did, with the consent of the magistrates who had made it, and who thereupon, on the said 15th of August*, made another order, which is the order now appealed against, and which was made before any Sessions had intervened, to which any appeal against the first order could be made. There was no appeal against the order of removal to *L. S.* — LE BLANC J. The point has been expressly decided in *Rex* v. *Llanrhydd*. (*b*) It was then shortly urged against the order, that however an order made might be abandoned before execution, it could not afterwards, but being in the nature of a judgment executed, it could only be reversed by appeal, and *Rex* v. *Chipping Farringdon* (*c*) was cited. — LORD ELLENBOROUGH C. J. There are two ways of getting rid of an order, one by consent of the parish in whose favour it is made to abandon it, the other, by waiting till the time of appeal, and appealing against it to the Sessions, by whom it may be quashed if not supported. Here the parish in whose favour it was made, finding upon further information that they could not support it, very sensibly determined to abandon it at once by consent, and acted accordingly. And what objection can there be, as Lord *Mansfield* observed in the case mentioned, to a party's abandoning a judgment intended for his own benefit. In the case in *Salkeld* there was no consent of the party in whose favour the order of justices was made to vacate it. — PER CURIAM: Orders confirmed.

The parish in whose favour an order of removal is made may by consent abandon it, without waiting to appeal to the Sessions and having it quashed there. And after such order cancelled by the removing magistrates, with the consent of both parishes before the time of appeal, another order made by them, removing the pauper to a different parish, was held good.

(*a*) See Rex v. Norfolk, *post*, pl. 938.

(*b*) *Ante*, pl. 893.

(*c*) *Ante*, pl. 889.

Order of removal of father confirmed is conclusive as to the settlement of son, although the son be not named in the order, and be emancipated at the time of making it, if he hath not acquired any settlement in his own right.

908. *Rex* v. *Catterall*, *H. T.* 57 *G.* 3. 6 *M.* & *S.* 83. — Upon appeal against an order for the removal of *William W.*, *Betty* his wife, and their two children from *Preston* to *Catterall*, the Sessions confirmed the order, subject, &c. In 1810, *George W.*, the father of the pauper, being previously settled in the township of *I.*, and the pauper being not then emancipated, occupied a tenement in *C.* of the yearly value of 10*l.* and upwards, for a sufficient time to gain a settlement. In 1814 he was removed by an order of two justices from *C.* to *I.*, which order, upon appeal by the inhabitants of *I.*, who endeavoured to show a settlement in *C.* by the taking of the tenement above mentioned, was confirmed, the Quarter Sessions not being then satisfied of the value of the tenement. At the time of making that order the pauper was emancipated, but had not acquired any settlement in his own right. And it was insisted on the part of the present appellant (the township of *C.*), that the above order of removal of the father having been confirmed, was conclusive as to the son's settlement, so as to preclude the respondent (the borough of *Preston*) from showing a settlement in *C.*, by taking the tenement above mentioned; but the Court were of a different opinion. — LORD ELLENBOROUGH C. J. I own that it appears to me that, in conformity to the rules which are applicable to judgments in other cases, we ought to quash the order of Sessions in this case. There is no doubt that the son is privy to the father's settlement; it is not pretended that he had any other at the time of the adjudication of the father's settlement, or that he acquired any subsequently to it. The question now is, Whether the son's settlement is to be governed by this adjudication? which, as it is a matter that regards the general municipal regulations of the realm, is of universal obligation and effect, unless fraud be shown. This, then, being a fair *bonâ fide* adjudication on the subject matter, is conclusive as to all the world. The pauper either derived a settlement from his father, or he did not. If not, this adjudication could not affect his settlement, but if he did, then is his settlement determined by that which has been pronounced with respect to his father, to which he is privy. — BAYLEY J. I think as between these parties the order of Sessions in 1814 was conclusive The difficulty I have felt in coming to this result arose from this consideration, lest we should thereby hold the son to be bound by an act to which he was not a party, and had no opportunity of giving an answer. But this difficulty is, I think, removed when it is recollected that this is not the son's appeal, and he might have appealed, if he had been prejudiced by his removal. If he had been the appellant, I should have wished for further consideration. As the case now stands, it appears that this very question, as to the father's settlement in *C.* being in contest, it was adjudged that his settlement was in *I.*, and not in *C.*, and so far I think that adjudication was conclusive as it concerns every other parish. I forbear, as I have already stated, to give any opinion as to the question, Whether it would have been conclusive against the individual if he had appealed? — ABBOTT J. The justices at Sessions appear to me to have mistaken the law, I think, therefore, this rule ought to be made absolute. It is important that this question should be settled on general principles, rather than upon nice and subtle distinctions. Now the general rule is, that an order of removal, confirmed upon appeal, is conclusive as to all other parishes, as it

regards the settlement thereby adjudicated; and it is immaterial as it respects this general rule, whether the child who derives the settlement from his father be named in the order of removal or not. So I think it has been adjudged in other cases. As, then, the adjudication in 1814 decided that the parent's settlement was elsewhere than in *C.*, this was conclusive as to the son's settlement there, unless it could have been shown that the father acquired such settlement after the emancipation of the son. — HOLROYD J. I am of the same opinion. It was decided in *Rex* v. *St. Mary, Lambeth* (*a*), that an order of removal unappealed from was conclusive, not only as to the settlement of the persons named in the order, but also as to children who were not included by name. And that decision, as it seems to me, goes to the full extent of the present. There is also a subsequent case of *Rex* v. *Rudgeley* (*b*), where a *feme covert* having been removed by an order which described her as "widow," against which order there had been no appeal, it was holden conclusive not only as to her settlement but as to that of her husband also. GROSE J. observed, that "the "question was, whether the former order, by which the pauper's "wife was removed to *A. T.*, against which there was no appeal, "was conclusive as to the settlement of the persons removed by "the order then in question." He said, "that nothing was more "convenient in every part of the law than certainty, and espe- "cially in cases of that kind. That the general rule, that an order "of Sessions unappealed from was conclusive, had been admitted. "And that the Court was bound, according to all the authorities, "to determine that the former order was conclusive, not only as to "the wife but as to the husband likewise."—LE BLANC J. also quotes the same general rule as an admitted one, and remarked, that in *Rex* v. *St. Mary, Lambeth*, though the woman had been removed as the wife, when, in fact, she was not so, yet it was holden that the parties were precluded by the order from disputing the settlement again upon a subsequent removal. These authorities appear to me to be decisive, that the order in question having been confirmed on appeal, is like a judgment of ouster, conclusive as to all the world, upon the point of the father's settlement, and of those deriving a settlement from him.—Orders quashed.

(*a*) *Ante*, pl. 902.

(*b*) *Ante*, pl. 904.

XIII. *Of Removals after Appeal.*

Two justices on the order being reversed, may remove the pauper back to the respondent parish.

909. *Honiton* v. *South Beverton, M. T.* 8 *W.* 3. *Comb.* 401. — Two justices removed a man from *H.* to *S.* The parish of *S.* appealed, and the Sessions reversed the order: now two justices may, by order, remove him to *H.* again; for it is but in execution of the order of Sessions, which could not otherwise be done, because it is out of the jurisdiction of the Sessions.

The parish against which an appeal is determined, is not thereby estopped from sending the pauper to a third parish.

910. *Harrow* v. *Ryslip, M. T.* 10 *W.* 3. *Salk.* 524. — The pauper was removed from *H.* to *R.* The parish of *R.* appealed; and upon the appeal he was adjudged to be settled at *R.* The parish of *R.* afterwards discovered that *G.* was the place of his last legal settlement, and sent him thither. The question was, Whether, after the adjudication upon an appeal, *R.* was not estopped against all the world, to say that *R.* was not the place of his last legal settlement? — HOLT C. J. *R.* is estopped to say otherwise; for if *R.* had not been the very place of his last legal settlement, the justices must have sent him back to *H.* This is,

in effect, the same question again, *viz.* Whether he belongs to *R.*? and it has been already determined by the justices on the appeal, who adjudged that he was last settled at *R.* The determination on the appeal must be final and conclusive, otherwise there would be no end of things; and the rather as to *R.*, because *R.* was party to the suit wherein this determination was made; and yet *H.* may be estopped where he is not party to a suit.—And THE COURT held the adjudication final as to *R.* against all persons and places; but as to *H.*, (for he had been formerly removed by them to *G.*, and that order reversed,) they were at liberty to send him to any other place, and were not estopped, because the justices on the appeal did not adjudge him to be settled at *H.*

If a pauper be removed from A to B, and the parish of B neglect to appeal, he cannot, at the distance of four years, be removed from a *third parish* to the parish of B, unless it appears that he had not gained a new settlement.

911. *Thackham* v. *Findon*, *H. T.* 12 *W.* 3. *Salk.* 489.—A poor person was removed in 1694 from *W.* to *F.*: the parish of *F.* did not appeal. In 1700 the man came to *T.*, and *T.* sent him by an order of two justices to *F.*; *F.* appealed, and the order was discharged. All the three orders being now brought up by *certiorari*, it was moved to quash the order made upon the appeal: and it was urged, that *F.* was bound by the first order from *W.* to them, from which they never appealed, with respect to all the world, and are concluded to say that the place of his last legal settlement was not with them. But in respect of the distance of time, THE COURT said they could not tell but that he might have gained a new settlement at *T.*, and that that might appear to the justices, and they might have good ground to discharge the order of the two justices. Then the counsel offered to produce an affidavit, that there was no new settlement proved; but the Court held they could not examine that by affidavit, nor inquire thereby *into* the reason of making the order.

An order of removal quashed for want of form is not conclusive between the contending parishes. See S. P. Rex *v.* St. Andrew's, Holborn, *post*, pl. 921.

912. *Rex* v. *Bishopswalton*, *E. T.* 10 *Ann. Foley*, 275.—A poor person was sent by two justices from the parish of *B.* to *F.*; *F.* appealed to the next Sessions, and the order was quashed; then one of the justices who made the first order, with another justice, made a new order, and removed him again from *B.* to *F.*; and *F.* appealed; and the Sessions confirmed the order.—KING: We hope this is wrong: for the first determination at the Sessions is final between those two parishes, and the justices had no power to make a second order.—PER CURIAM: Unless the pauper had gained a new settlement in the parish of *F.*, the justices could make no new order, and the new order must be quashed.—An order of two justices, if quashed at the Sessions upon an appeal for want of form only, is not conclusive between those two parishes.

If a pauper be settled, upon appeal, at A, and he is removed from thenceby a subsequent order, it must appear that he had gained another settlement. S. P. in the case of Little Bli-

913. *Alderton* v. *Felingtowe*, *M. T.* 4 *G.* 1. *MSS.*—Two justices made an order, dated the 19th of *April*, to remove a man from *B.* to *A.*, which was set aside at the next Sessions. Upon the 1st of *May* next another order of two justices was made for the removal of the said man from *B.* to *F.*, upon which there was no appeal: in *September* next there was an order to remove the man from *F.* to *A.* aforesaid. The Court now was moved to quash the third order, because the second had become absolute, there having been no appeal from it. The counsel on the other side agreed that the second order bound all persons as to preceding settlement; but insisted, that it ought to be intended, that

the man had gained a subsequent settlement at *A.* between the second and third orders. — But THE COURT held, that seeing the man was fixed upon *A.* by the second order, if he had gained a subsequent settlement in *A.* it ought to have appeared; and for that reason quashed the third order.

tham *v.* Somerley, Stra. 232. S. P. Foston *v.* Carlton, Stra. 567. Capel *v.* West Peckham, Salk. 489. Fort. 327.

914. *Munger-hunger* v. *Warden*, *H. T.* 18 *G.* 1. *Sett & Rem.* 160. — Two justices removed a pauper from *W.* to *M.* The parish of *M.* appealed, and the order was reversed for *a defect in form*; but which was a good order. Afterwards they sent the pauper back. Yet the order being good, it is final, and a bar to all subsequent orders.

A good order, though quashed at the Sessions, is conclusive. Rex *v.* St. Andrew, Holborn, *post*, pl. 921.

915. *Cirencester* v. *Coln St. Aldwin's*, *H. T.* 8 *G.* 2. *Burr. S. C.* 17. — The paupers were removed from *M.* to *Coln*, and the order of removal was *discharged* by the Sessions on appeal. The present order removed the same paupers from *C.* to *Coln*. And it appearing to the Sessions, on appeal from this last order, that the paupers were sent to the same parish of *Coln*, and that they had not gained any subsequent settlement since the former order removing them from *M.*, they also discharged the present order. — LORD HARDWICKE: We are all satisfied that an order of reversal is conclusive only on the parishes concerned; and not on all other parishes: this is reasonable, for *a third parish* may be able to give better evidence than had been given by the former parish; and why should one parish be concluded by the insufficiency of the evidence given by another? It may be collusive; it is at least, *res inter alios acta*, and should only bind the contending parties. — LEE J. I am satisfied, from the information of a gentleman who was counsel in the case of *Kingston Bowsey* (*a*), which is differently reported in *Salkeld* and in *Carthew*, that the true report of it is in *Carthew*; and that an order of discharge is only final between the two contending parishes.

If an order of Sessions be *discharged*, yet the pauper may be removed from *a third parish* to the *appellant parish*; for it is only conclusive as between the then contending parishes. S. P. Mynton *v.* Stoney Stratford, 2 Salk. 527. Swanscomb *v.* Shenfield, Salk. 492.

916. *Rex* v. *Sarratt*, *M. T.* 9 *G.* 2. *Burr. S. C.* 73. — Two justices removed *Lofty* from *S.* to *B.*, and on an appeal the order was quashed. On a motion to quash this order of Sessions, the counsel for *B.* urged, that two justices had before made an order, on 24th *April* 1734, to remove these paupers to *B.*; and *B.* had appealed to the Sessions, and their appeal was allowed, because the inhabitants of *S.* did not produce the order; and the inhabitants of *S.* were ordered to pay costs. Notwithstanding this order of Sessions, afterwards, on the 18th *July* 1734, two justices removed the pauper to the same place, which they had no power to do, being precluded by the allowance of the appeal. — LORD HARDWICKE: This is no objection to the present order of Sessions

An appeal allowed on account of the respondent not producing the order, does not preclude the respondent from a subsequent removal to the appellant parish.

(*a*) The order removed the pauper from St. Michael's to Kingston Bowsey, as to the place of his last legal settlement. The parish of Kingston Bowsey appealed, and the order of removal was quashed. The pauper afterwards intruded into the parish of Bedingham; and he was removed by an original order from Bedingham to Kingston Bowsey. This last order was removed by *certiorari* into the Court of King's Bench, and it was moved that it might be quashed, because, upon an appeal against the first order, the parish of Kingston Bowsey had been discharged, which could not have been if that parish had been the last legal settlement of the pauper. — *Sed per Curiam*: The order made upon appeal is final to none but to the contending parties, who were parties to the appeal, and not to strangers, as Bedingham is in this case. Carth. 516.

being quashed upon the merits; for though the rule is, that where the Sessions, upon an appeal, confirm an order of two justice, it is final upon the parish charged, as to all parishes whatsoever; and when they discharge the order of two justices, it only binds us between the two contending parishes; yet the order of Sessions now before us is not within that rule. For this order only allows the appeal; and an allowance of the appeal is no quashing of the order of the two justices. The Sessions only declare that the appeal was proper; and then give costs against the parish of *S.* for not producing the order; but there is no judgment of the Sessions one way or the other. Afterwards there is another order made by two justices; and an appeal from it; and the merits are, by consent, adjourned to a subsequent Sessions.

If a certificate-man be removed *before* he become chargeable, and the order on appeal be reversed, yet this shall not conclude the certificated parish from removing him to the certificating parish, *after* he becomes actually chargeable. S. C. Stra. 1256.

917. *Rex* v. *Osgathorpe*, *E. T.* 19 *G.* 2. *Burr. S. C.* 261. — The pauper was a certificate-man from *O.* to *D.*; there had been a former order of removal from *D.* to *O.*, before the pauper became actually chargeable; which order had been appealed from, and had been discharged generally on appeal; at the time of making the second order of removal, the paupers were become actually chargeable to the parish of *D.* — THE COURT: An order of Sessions discharging an order of two justices is final between the same two parishes; and an order of Sessions confirming an order of two justices is final to all the world, where the circumstances remain the same. But this rule does not hold where they are not the same. We must give our judgments upon the facts stated in the present special order of Sessions. Now this last order of Sessions states, "that he did not come by certificate from *O.* to *D.*, "and that they are now become actually chargeable." If therefore the state of the case now returned was not the former case, then the first Sessions have not determined any thing about the present case. It appears plainly, that the first order was a removal of these paupers, as *likely to become chargeable*; the latter, as persons under a certificate *actually become chargeable*. Indeed, we are not at liberty to presume rights accruing subsequently, unless they appear; but here it does appear that the right did plainly accrue subsequently, by their actually becoming chargeable. The other three judges concurred, for the same reasons. They held the two Sessions' orders to be very consistent each with the other. The former Sessions might discharge the former original order, because the paupers were not actually chargeable; and the latter Sessions might confirm the latter original order, because they were become actually chargeable.

If a pauper be removed from A to B, and on appeal the order be *discharged*; yet the parish of A may remove the pauper to B, if he *afterwards* gain a settlement in that parish. S. C. Sayer, 285.

918. *Rex* v. *Bradenham*, *E. T.* 29 *G.* 2. *Burr. S. C.* 394. — Two justices made an order, dated 30th *December* 1754, to remove *John Saunders*, and *Sarah* his wife, and their four children, from *T.* to *B.*; which order the Sessions *discharged*. Two justices made another order, dated 28th *March* 1755, for the removal of *Sarah Saunders*, the wife of *John Saunders*, and their four children, from *T.* to *B.*; which last order the Sessions *confirmed*. — THE COURT was of opinion, that after an order of removal is quashed, the pauper cannot be removed a second time from the same place to the same place, *without showing a new settlement*; that even if there had been time to gain a new settlement, the Court would not intend or presume it, but it must be specially stated: that an order is final upon the same parish, who obtained the first removal,

if quashed, upon appeal, on the merits; for that an order quashed upon the merits, on appeal, is conclusive between the two parishes; and if confirmed on the merits, it is final and conclusive upon the appealing parish against all the world; and that therefore this order is conclusive, unless a new settlement appears to have been gained; for if a new cause of removal is acquired, they may be removed again, but not otherwise.

An order of removal *discharged* does not prevent a *third parish* from showing a settlement in the same parish gained *subsequent* to that in question when the order was discharged, though prior to the Sessions in which the order was discharged.

919. *Rex* v. *Bentley*, *E. T.* 30 *G.* 2. *Burr. S. C.* 425.— *Pickering* was hired and served for a year in *Bentley*, and before the then last General Quarter Sessions was removed by proper order, from *Baxterley* to *S.*, as the place of his last legal settlement; which order of removal was quashed, upon an appeal, by the then last General Quarter Sessions. After the said last Sessions, the pauper being removed from *Baxterley* to *Bentley*, *Bentley* appealed, and offered to prove a settlement in *S.*, by a hiring and service for a year in *S.*, *before* the said last Sessions, but *subsequent* to the said hiring and service in *Bentley*; but the Sessions refused to go into it, being of opinion, that the determination of the Court at the said last Sessions was final and conclusive, so that no evidence could be given by the hamlet of *Bentley* of a settlement in *S.* prior to the said last Sessions. It was objected that this opinion was erroneous; it being a settled distinction, that though an order of *confirmation* is conclusive, and binds all the world, yet an order of *reversal* or *discharge* is only conclusive between the two parishes concerned, but does not bind a *third* parish. — THE COURT unanimously agreed to this distinction, and said, that it had been long ago fully settled and established, and with very good sense and reason, and upon right and just principles; for where the order of removal is confirmed upon appeal, and the pauper thereby fixed upon the parish appealing, such parish so charged was party to the litigation, and has been fully heard, and the law has run its course as to them, and therefore the determination is, and it is reasonable that it should be conclusive upon them, as to all the world, and all the world may take advantage of it; but where the order of removal is vacated and discharged, the two contending parishes are indeed estopped and concluded by the determination; but no third parish is estopped or concluded thereby, for the point has never been determined as to them, who were no parties to the former litigation, or have ever been heard at all. Now in the present case (as Lord *Mansfield* observed) there is only a negative opinion, in a litigation between *Baxterley* and *S.*, that the pauper was not settled at *S.*; but, notwithstanding this, though *Baxterley* might not be able to show that the settlement was really at *S.*, yet *Bentley* may be able to give stronger evidence than *Baxterley* could, and may be able clearly to prove it. So in the case of *Coln St. Aldwin's* (*a*), that was negatively determined not to be the settlement of *Mary Coats*, in a litigation between *Minety* and *Coln St. Aldwin's*; from the former of which places the two justices had removed her to the latter, and their order was discharged on appeal; but two other justices made a subsequent order to remove her from *Cirencester*, a third parish, to the parish of *Coln St. Aldwin*, without her having gained any settlement there subsequent to the former order, and the Sessions, upon appeal from this second order, discharged it; and Lord *Hardwicke* said, that the distinction now laid down was clearly

(*a*) *Ante*, pl. 821.

settled, and he held it to be a reasonable one; and he added the reason for it, namely, because a third parish might be able to give better and stronger evidence than the former parish could produce to charge the parish to which the pauper had been antecedently removed by the discharged order: and if the third parish, that is to say, any other parish into which the pauper should come, had such stronger evidence, they ought to be at liberty to use it, since all the former transaction was *res inter alios acta*. Therefore the case of *Coln St. Aldwin's* and the reason of it are decisive in the present case.

An order quashed is final between the parties.

920. *Rex* v. *Leigh*, *M. T.* 19 *G.* 3. *Cald.* 59. — Two justices, by order, removed *A. C.*, wife of *R. C.*, and their four children, from *E.* to *L.* The Sessions, on appeal, *quashed* the order. Two other justices removed *R. C.*, *A.* his wife, and their four children, from the same parish to the same parish. The Sessions on appeal *confirmed* this order. These orders were removed by *certiorari*, but it was not suggested that any act had been done, in the interval of the two orders of justices, to vary the right of settlement of the paupers. — ROUS moved to quash the last order of justices, and the order of Sessions confirming it, upon the ground, that an order *quashed* on appeal is as conclusive *between the parties*, as an order *confirmed* is *against the world:* and now WALLACE, upon the authority of *Rex* v. *Hinxworth* (*a*), acknowledged that these orders could not be supported. And both orders were quashed.

(*a*) *Ante*, pl. 895.

An order of removal quashed for *form* is not conclusive on the parties.

921. *Rex* v. *St. Andrew, Holborn*, *E. T.* 36 *G.* 3. 6 *T. R.* 613. — By an order of two justices dated 24th *July* 1794 (set forth) the settlement of *M. C.* was adjudged to be in the parish of *St. A.*, and she was directed to be removed from *St. A.* to *N.* By virtue of which order, *M. C.* was accordingly removed from *St. A.* to *N.* Upon appeal it was ordered that the said last-mentioned order for the want of a proper adjudication of the last legal settlement of the pauper, which was apparent on the face of it, should be quashed; and the same was accordingly quashed. After which, on the 25th *January* 1795, the present order was made, whereby two justices removed *M. C.* and her illegitimate child *S.* from *St. A.* to *N.*; upon appeal, the Court were of opinion that the said *M. C.* and her illegitimate infant child ought not to have been removed from *St. A.* to *N.*, because the first warrant and judgment of the said two justices, dated 24th *July* 1794, having been quashed as before mentioned, was binding and conclusive between the two said parishes; and therefore they ordered that the said last warrant and judgment of the said two justices, dated 21st *January* 1795, be quashed, and the appeal allowed. — CONSTE, in support of the order of Sessions, contended that the first order of removal, having been quashed on appeal, was conclusive between the two parishes; and therefore the adjudication of the Sessions upon the last order was proper. In *Rex* v. *Bishopwalton* (*b*), it was held that an order of removal quashed for want of form was not conclusive between the contending parties; but this has been over-ruled in latter cases. In *Munger-hunger* v. *Warden* (*c*), a pauper having been removed from *W.* to *M.*, upon appeal the order was reversed for a defect in form, but which was nevertheless a good order. Afterwards the pauper was sent back; yet the order being good it was held final, and a bar to all subsequent orders. And finally in *Rex* v. *Leigh* (*d*), which was the last case on the

(*b*) *Ante*, pl. 912.

(*c*) *Ante*, pl. 914.

(*d*) *Ante*, pl. 920.

subject, *A. C.* wife of *R. C.*, and their four children, were removed by an order dated 25th *April* 1778 from *E.* to *L.* The Sessions on appeal quashed the order. Afterwards two other justices, by order, dated 22d *July* 1778, removed *R. C.*, *A.* his wife, and their four children, from the same parish to the same parish, and the Sessions on appeal confirmed the order. These orders being removed by *certiorari*, it was moved to quash the last order, upon the ground that an order quashed on appeal is as conclusive between the parties as an order confirmed is against the world. And WALLACE, upon the authority of *Rex* v. *Hinxworth* (*a*), where it was held that an order unappealed from is conclusive, acknowledged that the last order could not be supported; and the Court adjudged accordingly. — LORD KENYON C. J. said, that as the first order in this case was quashed for defect of form, which appeared by the minute of the Sessions, it was essentially different from the last case cited, where the order was quashed generally, which must be taken to be on the merits. And it is undoubted law, that if an order of removal be quashed for form, it does not conclude the parties.

(*a*) *Ante*, pl. 895.

CHAPTER XII.

APPEAL TO THE SESSIONS.

I. *The Authority of the Sessions.*
II. *Who may appeal.*
III. *Notice of Appeal.*
IV. *The Sessions to which it must be made.*
V. *Of Adjournment.*
VI. *Of stating a special Case.*
VII. *The Superintendancy of the King's Bench.*
VIII. *Of Costs and Charges.*
IX. *Of Certiorari.*
X. *Of Evidence.*

I. *The Authority of the Sessions.*

See stats. 5 *G.* 2. *c.* 19. 16 *G.* 2. *c.* 18. 54 *G.* 3. *c.* 84. 59 *G.* 3. *c.* 28. 1 *G.* 4. *c.* 36.

The Sessions have no authority to make an original order of removal. S. P. 2 Salk. 479.

922. REX v. *Bond*, *M. T.* 2 *Jac.* 2. *Show.* 503. — An order was made at *the Quarter Sessions* for the county of *S.* removing the defendant and his family, as paupers, to the parish of *Clapham*, as to the place of his last settlement, unless he gave security to save the parish of *M.* harmless. The order being removed by *certiorari*, SHOWER moved to quash it, because the statute of 13 & 14 *Car.* 2. *c.* 12. provides, that if any persons think themselves aggrieved they might appeal to the next Quarter Sessions, and here they go *per saltum* to the Sessions (*a*), and obtain a conclusive order, by which the parish of *Clapham* is deprived of the appeal. — THE COURT held that the Sessions could not make an *original order* of removal; and the present order was therefore quashed.

(*a*) See the case of Rex *v.* Yarpole, *post*, pl. 737.

The Sessions, on hearing an appeal against an order of removal, may adjudge the pauper to be settled in any of those parishes that are parties to the order.

923. *Rex* v. *Colliton*, *E. T.* 4 *W.* & *M. Carth.* 221. — Two justices of peace, &c. reciting, that upon hearing the parishioners of *H.*, *A.*, and *C.*, concerning the last settlement of one *Hurley* (then residing in *H*), it appeared to them, that the said *Hurley* was last legally settled at *A.*, therefore they order him to be removed thither. *A.* appealed to the Quarter Sessions, where the order was repealed; and the Sessions farther ordered, that *Hurley* should be removed to *C.*, as being legally settled there; but their order did not recite, that *C.* was heard upon the appeal. And now it was moved to quash the last part of this order of Sessions; first, because it was an original order as to *C.*, and so they are deprived of an appeal, which is given by the statute; and the Sessions ought only to have vacated the first order, and not to have made any order on *C.*; for by this means *C.* is charged without any remedy, notwithstanding they could make it appear that *Hurley* had a later settlement in any other parish whatsoever, for that this order of Sessions is positive upon them.—*Sed non allocatur;* because it appears, that *C.* was a party to the first order made by the two justices, and so by consequence to the appeal; wherefore the Sessions

might well settle him upon them, because by the appeal *C.* was before the Sessions: *secùs*, if *C.* had not been a party to the original order, but mere strangers; for then the Sessions could not charge them, as not being before the Court.

The Sessions may vacate an order of two justices *by implication.* Comb. 478.

924. *Rex* v. *Hartfield, E. T.* 4 *W. & M. Carth.* 222. — Two justices made an order of removal, from which order *the pauper* appealed; and the Sessions, without expressly vacating the order of two justices, made an order to return the pauper to the parish from which he was removed. It was objected, that the authority of the Sessions extends only to *vacate* or *affirm*, and therefore that this was a new and original order, which they had no power to make. — And HOLT C. J. was of that opinion. But two judges against him; for that the Sessions' order does vacate the order of the two justices *by implication*, and that is sufficient in this case. And upon their opinion the order was confirmed.

The Sessions cannot at a *subsequent sessions* make an order *to review* a case on which they determined at a *preceding sessions.* Comb. 416. See 2 Str. 1168.

925. *Rex* v. *Cuckfield, H. T.* 8 *W.* 3. 2 *Salk.* 477. — *Ann Talby* was by order removed from *C.* to *B.*; and this order being appealed from, was confirmed at the Sessions; but the Sessions after that made an order of review, and quashed the former order of Sessions, because made by surprise. — ET PER CURIAM: The order of review must be quashed; for the justices have no power after the first Sessions.

The Sessions may *affirm* or *quash* an order of removal, but they cannot supersede an original order, and make a new order. Salk. 483. 608. 5 Mod. 208. And see the same point in Haines' case. Comb. 286.

926. *Rex* v. *Oswell and Woking, E. T.* 8 *W.* 3. 2 *Salk.* 472. — An order was made upon appeal, setting forth, that by the order of two justices, upon a controversy before them between the parishes of *Woking* and *O.*, a poor person was removed to *O.*: and that upon complaint of the churchwardens of *O.*, the Sessions ordered their order to be *superseded*, and that the person should be removed to "*Waking* aforesaid." And it was objected, that the act of parliament only gives the Sessions power to affirm or quash, but not to supersede an order, or to suspend it for a time; and that the case before them being for the parish of *Woking*, an order made by them for another parish not concerned, *viz.* the parish of *Waking*, must be void, and that the word "aforesaid" would not help it, because *O.* was the parish last mentioned. — PER CURIAM: Superseding is not a proper word, for there is a difference between *a supersedeas* and *a repeal*: a commission of *oyer* and *terminer* that is superseded, may be revived by *procedendo*, without granting a new commission; but that cannot be in the case of a repeal, though this word is commonly used by justices of peace upon such occasions; and then there is a plain difference between *Waking* and *Woking*, for by what appears there may be two distinct parishes. But no judgment was given, for the cause was referred to a judge of assize.

The Sessions on discharging an order of removal can only order the pauper to be sent back to the respondent parish; but they cannot adjudge his settlement in a third parish.

927. *Rex* v. *Amner, M. T.* 8 *W.* 3. 2 *Salk.* 475. — The case was, at the complaint of the churchwardens of *T.*, to two justices of the peace of the said county, concerning a poor man and his wife; they the said justices adjudged him to be last legally settled at *Terrent-K.*: upon which they appealed; and there it was ordered, That it appearing to the Sessions that he was last settled at *A.*, therefore they discharge *Tirrin-C.*, and order the poor man to be removed to *A.* This was quashed upon the motion of GOULD, because this was to make an original order, which the justices at Sessions have no power to do; they might have reversed the first order, and ordered the party to be carried back to *Terrent-K.*, but they could

not remove the party to *A.*, a third parish, who was no ways concerned in the order or appeal; and if they are really chargeable with it, it must be at the complaint of *Terrent-K.* to two justices of the peace.

The Sessions cannot order the pauper to be sent back. Honiton v. South Beverton, *ante*, pl. 909.

928. *Rex* v. *Milverton*, *E. T.* 1 *Ann. Mod.* 10. — Upon an appeal to the Sessions, they made an order that the first order should be quashed, and the party sent to the parish from whence he was thereby removed. It was agreed, that the justices of the Sessions had only power to affirm or quash the former orders, but not to make a new one; but because an order may be made good in part and void for other part, that part which ordered the poor person to be sent back was quashed, and the rest confirmed.

The Sessions cannot make a new order vacating a former order at any time during the same Sessions.

929. *St. Andrew, Holborn*, v. *St. Clement Danes*, *M. T.* 3 *Ann.* 2 *Salk.* 494. — The Court of Quarter Sessions of *Middlesex* made an order, and afterwards the same Sessions vacated it by a subsequent order, and a *certiorari* being brought, both orders were returned thereon. — HOLT C. J. You should not have returned the vacated order, but only the latter. This is as if we, disliking our judgment, should the same term make an entry of two different judgments, and return both upon a writ of error, which ought not to be: the Sessions is all one day, and the justices may alter their judgment at any time while it continues. Thus, at the *Old Bailey*, you see judgment *de pain forte et dure* given; and yet, if the party will plead, we will set aside that judgment, and admit him to plead.

Or *confirm* an order that has been previously *quashed* during the Sessions.

930. *Battersea* v. *Westham*, *E. T.* 10 *Will.* 3. 5 *Mod.* 396. — Two justices made an order to remove a poor man from *W.* to *B.*; the parishioners of *B.* appealed to the Sessions, and the order of the two justices was set aside; afterwards, but in the same Sessions, upon allegation of counsel, the Sessions superseded their first order, and confirmed the order of the two justices; and upon a motion made to this Court, it was alleged, that the record was in the breast of the Court during the whole Sessions, and therefore they might lawfully supersede their own order. To which it was answered, that they having once executed their authority, cannot set it up again. — THE COURT affirmed the second order of Sessions, and quashed the last.

The Sessions, if the magistrates present are *equally divided*, cannot make any order, but ought to enter *continuance* till the next Sessions, in order that the Court may again proceed on the appeal.

931. *Rex* v. *the Justices of Westmoreland*, *T. T.* 8 & 9 *G.* 2. 2 *Sess. Cas.* 352. — Order of two justices of *the borough*, for removing a poor family. Appeal to the Sessions of *the county*, at which only four justices being present, who were equally divided, no determination was made, nor the appeal adjourned. *Mandamus* directed to all the justices of the county in general to proceed on the appeal. Return, that at such a Sessions appeal was lodged, and that four justices only attended, two whereof were interested in the question, the other two were divided in opinion. This was set out in the paper; and it was agreed on all hands, that the return was very odd, and not to be supported. — ABNEY for the justices said, that this writ of *mandamus* was bad, and ought to be quashed; for that it does not appear that the appeal was before them, and that for aught appears, the *mandamus* requires the justices to do an impossible thing, *viz.* to proceed on an appeal not before them, since the appeal being lodged at a former Sessions was not continued over to the subsequent Sessions, and therefore was by law gone. — ROBINSON, on the other side, said, that it was not usual

in writs of *mandamus* to set out continuances; and that if any such thing had happened as alleged, the fault was in the justices, who ought to have adjourned the appeal, till by the coming of more justices the matter might have been determined. — THE CHIEF JUSTICE: The question is, Whether there is a possibility of the justices proceeding in this appeal? for if there be not, there would be a failure of justice in this respect, and an information ought to go against the justices who were at the Sessions; but I should be glad to know whether it is usual to set out continuances in these writs of *mandamus*. — ABNEY said, that in the case of *Rex* v. *St. Mary's in Shrewsbury*, the Court inclined to make a rule on the town clerk to return continuances; but determined nothing finally in that case, for that they submitted to amend the return. — THE CHIEF JUSTICE: Let the case stand over; and Sir T. ABNEY will advise his clients to proceed on the appeal, or to return continuances: and THE COURT seemed at length inclinable, if they did not comply, to grant a peremptory *mandamus*.

The authority of the Sessions is final as to matters of *fact*; and therefore no *bill of exception* will lie to the justices on the hearing an appeal against an order of removal. S. C. Str. 1040. 2 Sess. Cas. 254. Bar. K. B. 415.

932. *Rex* v. *Preston*, *E. T.* 9 *G.* 2. *Burr. S. C.* 77. — Two justices removed the children of *T. Harrison* deceased, from *D.* to *P.*; and, on appeal, the Sessions confirmed the order generally, not caring to state a special case. The counsel tendered a *bill of exceptions* containing the case. — The single question was, Whether *a bill of exceptions* would lie, in this case, to the Court of Quarter Sessions? — THE COURT were unanimously of opinion that it would not. (*a*)

The Sessions may, by 5 G. 2. c. 19. alter the name of the place of *removal* to the name of the place of *settlement*, if the error appear the mistake of the clerk.

933. *Rex* v. *Harrow-on-the-Hill*, EDITOR'S *MSS.* — An order of justices was made for the removal of a man and his wife, and two children, from the parish of *L.* to the parish of *H.*, upon an adjudication that the settlement was in *L.*, and the justices ordered them to be carried to *H.* Upon appeal to the Sessions this order was confirmed and amended, by striking out *L.* and inserting *H.* It was moved to quash those orders, for that the judgment being defective it cannot be altered; and though by the statute justices at Sessions have power upon appeal to amend any defects of form that shall be found in any order, yet this is a defect in substance, and therefore not amendable. — THE COURT seemed to be of opinion that it was only a defect in form, being a mistake of the clerk who filled up the blank order with the name of *L.* instead of *H.*; but they granted a rule to show cause; and

(*a*) The judges delivered their opinions in this case at great length: but as to the present point, the substance may be comprised in the following observation by Lord *Hardwicke*: "In "the common case of bills of exception "tendered to the judges, the jury alone "are the proper persons who would be "to decide whether they believe the "evidence or not; the judges have "nothing to do with the belief of the "evidence; they are not to determine "on its credibility, but upon the consequence of law arising from it: but "the justices at Sessions are judges of "the fact as well as law; they are jury "as well as judges; it is in their breast "only whether to believe or disbelieve "the evidence; and who is to take upon "himself to say what portion of the "evidence they do believe and what "they do not? Suppose six of the justices believe the evidence, and two of "them do not believe it, are the two to "conclude the six as to the belief of "the fact? When the justices specially "state the fact, it is the act of the "whole Court; but here two only out "of the whole number have sealed the "*bill of exceptions*."

in *Trinity* term following, the order of Sessions was confirmed by consent.

The Sessions cannot amend an order in matter of *substance* which requires examination; but only in defects of *form* appearing on the face of the order. S. C. Stra. 1158. 2 Sess. Cases, 190.

934. *Rex* v. *Great Bedwin*, *T. T.* 14 & 15 *G.* 2. *Burr. S. C.* 163. — The inhabitants of *G. B.* appealed to the Sessions from an order of justices beginning thus: "*Wilts*, to wit; To the church-"wardens, &c. of the parish of *Wilcot*, and to the churchwardens, "&c. of the parish of *G. B.*, in the said county." And it stated, that *C. M.* and his family had dwelt for some time in *Wilcot* under a certificate from *G. B.*; and then it went on thus: "Now the "said *C. M.* being reduced to great poverty, lately applied to the "churchwardens, &c. of the parish of *Wilcot* aforesaid, who ac-"cordingly did relieve him;" and therefore the justices removed him to *B.* The Sessions, on motion on behalf of the parish of *Wilcot* suggesting defects in form, and praying that they might be amended pursuant to 5 *G.* 2. *c.* 19. were of opinion that the original order was amendable, for that it appeared to them on due examination upon oath, that the order was really and truly made by the two justices on the complaint of the churchwardens, &c. of *Wilcot*, in due manner made to them on that behalf; that the said *C. M.*, his wife and children, were actually become chargeable to *Wilcot*; that the omitting to mention it was a mere mistake in drawing up the order; that it also appeared that *G. H.* and *J. S.* were, at the time of making the order, two of His Majesty's justices of the peace for the county of *Wilts*, and one of them of the *quorum*; that the omitting to mention the same was also a mere mistake in drawing up the order; and that the defects were amended in court. — LEE C. J. The act directs that the Sessions shall amend defects in form, and afterwards proceed on the merits: one would think that this meant defects or mistakes appearing upon the face of the order, mere defects or wants *of form*. But some of these matters here amended seem to be merits; as the adding, "upon complaint of the overseers of the parish from "whence the paupers were removed," without which complaint the justices have no jurisdiction. Then what can be more of the merits than the certificate-man's having become actually chargeable? Now the two justices have not adjudged that; they only say, that he applied to the overseers, and was relieved by them, but it does not appear that it was at the parish expence. If there be any opposition between form and merits, these matters must be merits. As to their being justices of the county, a plain reference to the margin is sufficient; yet this is uncertain as it is worded, to which of the two parishes the words "in the said county" relate (*a*); they were both in *Wiltshire*. The allowing such amendments as these to be within the true construction of this statute, would throw the determinations of all cases of this sort into the hands of the Sessions. — THE OTHER JUDGES concurred, and Mr. JUSTICE WRIGHT added, that the Sessions cannot amend any thing which requires examination: and the orders were quashed.

(a) See the case of Rex *v.* Chilvers Coton, *ante*, pl. 903.

The Sessions cannot confirm an order except upon appeal.

935. *Rex* v. *Leverington*, *T. T.* 21 & 22 *G.* 2. *Burr. S. C.* 276. — Two justices removed *J. Bunting* and his wife from *L.* to *S.* This order was not appealed from; but the Sessions made an order in confirmation of the original order. This confirmatory order was quashed by THE COURT OF KING'S BENCH, as being a volun-

tary, and, as it were, extra-judicial act of the Sessions to confirm an order that was not complained of. (a)

936. *Rex* v. *Justices of Northampton*, *T. T.* 17 *G.* 3. *Cald.* 30. — The Sessions referred the consideration of an appeal against a poor-rate to three justices out of Sessions. This reference was made with the consent of the parties. The Sessions afterwards adopted the opinion of the referees, and made an order accordingly. — LORD MANSFIELD: The justices at Sessions referred the merits of this appeal *A*, *B*, and *C*, justices acting for *Brackley* division, in the neighbourhood of which this parish lies, or any two of them; and afterwards adopted the opinion of these gentlemen, without exercising their own judgment; and if they did this of their own accord, without the consent of the parties, it cannot be supported; for they are not warranted to delegate their authority: but if they acted with the consent of the parties, I think they have done very right; and we never suffer the party who consented to the reference, by coming here, to set it aside. And I think it sufficient, if the attornies consented and attended the reference.

The Sessions, with the consent of the parties, may refer the consideration of an appeal.

937. *Rex* v. *Yarpole*, *M. T.* 31 *G.* 3. 4 *T. R.* 71. — Two justices removed a pauper from *L.* to *Y.*, who appealed to the Sessions at which 15 magistrates were present; eight of whom were for confirming, and seven for quashing it. But it was objected, that as three of those eight were rated at *L.*, they were interested, and ought not to vote: they however persisted, and the order was *confirmed*, subject to the opinion of this Court, on a case reserving that question. The orders having been removed here by *certiorari*, a rule was obtained on a former day to show cause why the original order of two justices, and also the order of Sessions confirming it, should not be quashed. — And BEARCROFT now admitted that the order of Sessions could not be supported.

On an appeal to the Sessions against an order of removal, those justices who are rated to the relief of the poor in either of the contending parishes cannot vote.

938. *Rex* v. *Justices of Norfolk*, *H. T.* 2 & 3 *G.* 4. 5 *B.* & *A.* 484. — *Cooper*, in last *Michaelmas* term, obtained a rule *nisi* for a *mandamus* to the defendants, commanding them to enter continuances, and hear the appeal of the churchwardens and overseers of the parish of *L.*, against an order for removing *Hannah*, the wife of *Edward George* (then a prisoner in the house of correction at *A.* in that county, convicted of larceny), and her family from *R.* to *L.* It appeared, that the removal had taken place on 22d *August* last, and that on the 5th *September* following, notice of appeal was given. On the 10th *October*, a supersedeas, under the hands and seals of the removing magistrates, was served on the officers of the appellant parish, stating, that doubts had been entertained whether the order could be supported by legal evidence, and requiring them to deliver up the duplicate order to be cancelled, and also requiring the other party to take back the pauper. It appeared, that this was done at the instance of the respondents, the order of removal having been founded on the examination of *E. G.*, taken under 59 *G.* 3. *c.* 12. *s.* 28., and that, he being a prisoner convicted and under sentence for larceny, his

Where an order of removal has been executed, and by consent of the removing parish and the magistrates making it, it is superseded, and the paupers taken back, it is in the discretion of the Sessions to enter an appeal against it or not, according as they may think that justice requires it, in order to compel the respondents to pay

(a) Sir *James Burrow* says the very same thing was done in the case of Godmin *v.* St. Michael's because the order of Sessions confirming the original order was not made upon appeal; for which reason it was agreed by the Court and counsel to be a void order. See also *ante*, Rex *v.* Oswell, pl. 926.

the costs of maintenance, &c. incurred by the appellants before the order was superseded.

examination was not evidence, he himself not being an admissible witness until the expiration of his sentence. It did not appear on the affidavits, whether the costs of maintenance between 22d *August* and 10th *October*, had been paid or tendered by the respondents. On the 17th *October*, application was made to the Sessions for leave to enter the appeal, which was refused, the Court being of opinion, that the order was completely at an end. — BAYLEY J. This is a very different case from *Pancras* v. *Rumbold*, (*a*) which is only an authority to show that the justices having been surprised into making an order, may, of their own authority, and without the consent of the removing parish, supersede it before execution, but not after. But in this case, there is the consent of the removing parish. The language of Lord Ellenborough in *Rex* v. *Diddlebury* (*b*), puts it upon that very ground, for he says, "there are two ways of getting rid of an "order, one by consent of the parish in whose favour it is made to "abandon it, the other by appeal;" and he adds afterwards, "what objection can there be, as Lord *Mansfield* observed, in "the case of *Rex* v. *Llanrhydd* (*c*), to a party's abandoning a judg-"ment intended for his own benefit." These observations show that the consent of the removing parish alone is requisite. I think, that in cases like this, the Sessions may exercise a discretion, and enter the appeal or not, so as best to answer the purposes of justice. If the parties removing do not choose to pay the expences of maintenance incurred, previously to the supersedeas, they may then enter the appeal, for the purpose of compelling them so to do. If they are willing to do it, the Sessions may refuse to enter the appeal. Here the only object of entering it, would be, either to obtain a decision from the Sessions, in the absence of a material witness, or to respite the appeal from time to time. In the latter case there would be a useless expense entailed upon the parties. As soon as *G.* is discharged from prison, a new order may be made; and it is better for the appellants that it should be so, for they will not be compelled to keep the family in the mean time. I think, therefore, that it was entirely in the discretion of the Sessions to enter the appeal or not, and I do not see any ground why this Court should interfere with their decision. This rule must therefore be discharged. — BEST J. The principle upon which this Court proceeds in issuing the writ of *mandamus* is to prevent a failure of justice. Here the very reverse would be the effect. For we should either compel the Sessions to hear the case in the absence of the person who can give the most material information, or put the parties to the useless expence of obtaining respites from time to time, till his imprisonment be over. — Rule discharged.

(*a*) *Ante*, pl. 781.

(*b*) *Ante*, pl. 907.

(*c*) *Ante*, pl. 893.

Upon an appeal against an order for the allowance of overseers' accounts, a magistrate, a rated inhabitant of the parish cannot vote either on the determination of the

939. *Rex* v. *Gudridge*, *E. T.* 7 *G.* 4. 5 *B.* & *C.* 459. — A rule had been obtained for quashing a writ of *certiorari quia improvide emanavit*. The writ issued under the following circumstances: an appeal against an order for the allowance of the accounts of the defendants as churchwardens and overseers of the poor of the parish of *C.*, was entered and respited at the *Midsummer* Quarter Sessions, and came on to be heard at the *Michaelmas* Sessions, when the order for the allowance was quashed. The attorney for the respondents requested to have a case for the opinion of this Court, but a majority of the justices present thought it ought not

to be granted. After some of them had left the court a case was again applied for, when three magistrates voted for a case, and two against it. One of the three was a rated inhabitant of the parish of *C.*, and had on that account refused to vote on the decision of the appeal. A case was afterwards drawn up without the concurrence of the appellant or his attorney, and together with the order of Sessions was removed into this Court by *certiorari*.— ABBOTT C. J. We think it the safer course to hold that the magistrates should not interfere in cases where they are interested, and that the rule for quashing the writ of *certiorari* must be made absolute. — Rule absolute.

appeal, or on a question as to granting a case for the opinion of this Court.

II. *Who may appeal.*

940. *Rex* v. *Hartfield, E. T.* 4 *W. & M. Carth.* 222. — Two justices made an order to remove *Wells* from *H.* to *F.*, from which order *Wells* the party himself, and not the parish, appealed; and thereupon the Sessions made an order to return him to the parish of *H.*, from whence he was removed; but they did not by any express words vacate the first order. It was now objected, that the party himself cannot appeal, because the appeal is given only to the parish aggrieved, and not to the party removed. — *Sed non allocatur:* for, PER TOTAM CURIAM, the party may appeal as well as the parish.

The *pauper* removed may appeal against the order as well as the parish. Comb. 478.

941. *Rex* v. *Burcott, H. T.* 12 *Ann. Sett. & Rem.* 25. — The Sessions confirmed the original order. The order of Sessions begun thus, "Upon hearing the appeal of *Burcott.*" It was moved to quash this order, because it was not *the parish* that appealed, but *the inhabitants*, and therefore the order nonsensical and absurd. — THE COURT: It must be *intended* the parishioners, for it can have no other meaning.

The order of Sessions stating it to be on the appeal of *Burcott*, shall be intended the appeal of the *inhabitants* of the parish of *Burcott.*

942. *Rex* v. *Almanbury, T. T.* 4 *G.* 1. *Stra.* 96. — An order of two justices was quashed at Sessions upon appeal, without saying *at the appeal of the party grieved.* And this was objected, in order to quash the order of Sessions, and it was compared to the case of a complaint that a man is likely to become chargeable; which has been held ill, because the complaint must be by the churchwardens and overseers. And the case of *Rex* v. *Sir Thomas Putt*, where an inquisition at Sessions, *coram* A. *et al. sociis suis*, was held ill, for that there must be two, and nothing is to be presumed in a limited jurisdiction. And THE COURT here inclined to quash the order for this fault, till they were informed that the precedents were most of them so; and for that reason, and that only, as the C. J. declared, the order was confirmed.

An order of Sessions made upon appeal is good, although it do not state that it was made on the appeal of the party grieved. Yelv. 126. Fort. 301. Viner Abr. "Sessions."

III. *Notice of Appeal.*

See stat. 9 *G.* 1. *c.* 7. § 8.

943. *Anonymous. T. T.* 6 *G.* 1. *Str.* 315. — *Mandamus* to the Sessions to proceed on an appeal. They returned, that the appeal was dismissed for want of six days' notice, which by a former order they had appointed to be given of every appeal. — WHITAKER said, they should have adjourned it, and not dismissed it. — SED PER CURIAM, the return was allowed, for they are the properest

Before the statute the Sessions might *dismiss* an appeal for want of such notice as their practice requires.

judges of a point of practice at the Sessions; and all Courts must have stated rules to go by. (a)

The Court will intend an order late served, where the order on appeal is made at the next Sessions but one. 1 Sess. Ca. 280. S.C.

944. *Road* v. *North Bradley*, *T. T.* 15 *G.* 2. 2 *Stra.* 1168. — A pauper was removed from *R.* to *B.* *B.* gave notice to appeal, on which *R.* took him back, but however got their order confirmed at Sessions; the next Sessions set both aside as fraudulent. And now *R.* insisted, that the order was good, as not being appealed from at the next Quarter Session. And as to the other, that it was not in the power of one Session to set aside the act of the other. (b) All being now before the Court, they quashed the first order, as being properly quashable on appeal; and would not take notice, that it was not at the next Sessions after service of the order, which being in the case of a recent appeal they would suppose to have been served too late for an appeal to the next Sessions. (c) And as to the order of confirmation, they quashed that, as not being made on any appeal, and consequently without jurisdiction (d), and at the same time quashed the latter part of the second Sessions order, that rescinded that confirmation, as not being properly before them.

The Sessions may adjourn the hearing, but cannot quash an order, for want of due *notice* of appeal.

945. *Anonymous*, *T. T.* 10 *G.* 1. *Foley*, 261. — The Sessions quashed an order of justices, and assigned for a reason, that there was not due notice given of the appeal, pursuant to the act of 9 *G.* 1. — PER CURIAM: The order of Sessions must be quashed, because due notice not being given was no reason to quash the order of two justices, but might be a reason to adjourn the appeal.

The want of time to inquire into the facts of the case is no excuse for not giving notice of appeal before the ensuing Session. See Rex v. Flintshire, *post*, pl. 966.

946. *Rex* v. *Silchester*, *H. T.* 6 *G.* 3. *Burr. S. C.* 551. — Two justices removed *Wise*, and *Jane* his wife, from *N.* to *E.*; but the parish of *E.* did not appeal to the next or any subsequent Session; but soon afterwards finding that the woman was not *Wise*'s wife, and that she was settled at *S.*, removed her by the name of "*Jane Moor*, "single woman," to that parish. The parish of *S.* appealed against this order, and it being proved on the appeal that she had never been married to *Wise*, the Sessions affirmed the order. It was contended in the Court of King's Bench, that the parish of *E.* had not had sufficient time to inquire into the fact before the limited time of appealing was past, and that, as soon as such inquiry could be perfected, the fact came out to be false. — But THE COURT held that the order being unappealed from was conclusive.

The notice of appeal required by 9 G. 1. c. 7. does not relate to the *receiving*, but to the *hearing* the appeal. See Rex v. Justices of Wor-

947. *Rex* v. *Justices of Gloucestershire*, *E. T.* 19 *G.* 3. *Dougl.* 191. — On an application for a *mandamus* to compel the justices of the Quarter Sessions in *Gloucestershire* to receive an appeal from an order of removal, it appeared, from the affidavits on which the rule was obtained, that the examination of the pauper was taken in *August*; that the order of removal was dated the 12th of *November* following; and the Sessions, where the appeal was tendered, held on the 12th of *January* in the ensuing year, that no

(a) And it is said that "reasonable "notice, required by the above sta- "tute of 9 G. 1. c. 7., is notice under "their practice." Vide Rex v. Justices of Yorkshire, *post*, pl. 963. — The notice should be in writing, and signed by the officers of the appellant parish. 2 Nolan, 524. But if signed for them by their attorney it would perhaps be sufficient. Jory v. Orchard, 3 Bos. & Pull. 39. See 4 Espin. N.P. 208.

(b) Vide Rex v. Cockfield, 2 Salk. 477.

(c) Rex v. Norton, *post*, pl. 957. Rex v. Turley, 1 Sess. Ca. 175.

(d) 2 Salk. 479. S.P.

notice of appeal had been served (for which the reason assigned was, that the appellants had not been able to get their witnesses ready till it was too late to give such notice); that the Court had been moved to receive the appeal, and adjourn the consideration of it till the following Sessions, and that they had refused so to do. — THE COURT were clearly of opinion, that the justices ought to have received the appeal. — The rule was made absolute.

cestershire, Easter Term, 16 G. 3.

948. *Rex* v. *Huntingdonshire, E. T.* 23 *G.* 3. *Cald.* 283. — Upon a removal of a pauper by an order of two justices, the notice of appeal to the Quarter Sessions was served upon a *Sunday;* for had the appellants deferred the service of their notice till another day, they would not have been in time to have given, under the practice established in that Court, reasonable notice to the respondents for the purpose of *trying the merits* of the appeal. The Court of Quarter Sessions (being of opinion that the party aggrieved was not at any rate, or for any purpose, entitled to appeal, unless the prescribed notice had previously been given to the respondents; and also that a service of a notice upon a *Sunday* not being a legal service, there had not, in point of law, been any notice) refused to hear, adjourn, or enter the appeal. — MINGAY, who had obtained a rule to show cause why a *mandamus* should not issue, directing the justices to receive and hear the appeal, no cause being shown, now made the rule absolute.

The Sessions are bound to receive an appeal to an order of removal, although no notice has been given.

949. *Rex* v. *Justices of North Riding of Yorkshire* (*a*), *E. T.* 29 *G.* 3. 3 *T. R.* 150. — This was a rule calling on the defendants to show cause why a *mandamus* should not issue, directing them to receive, hear, and determine an appeal of the inhabitants of *G.* against an order of two justices, for the removal of a widow and four children from *S.* to *G.* The order was made on the 26th *November* last, and executed on the 28th. It appeared, that the appellants attended the next Quarter Sessions, held on the 13th *January* last, and moved the Court for leave *to lodge the appeal and to respite the hearing* thereof to the then next Quarter Sessions. The following entry was made by the Quarter Sessions: "Forasmuch as it appears "to this Court, that there has been sufficient time since the re- "moval of the paupers for the appellants to give notice and come "prepared to try this appeal at this Sessions, and no cause shown "why they did not proceed accordingly, it is ordered, that *the motion "for lodging the same, and respiting the hearing to the next Quarter "Sessions, be rejected.*"—THE COURT were of opinion, that the justices had not acted wrong; for the motion was, in effect, to adjourn the appeal. And it was evidently the intention of the parties not to enter the appeal unless the Court would adjourn it. The justices are to judge of the reasonableness of the time; and in some counties they establish a rule regulating the time of notice. Here it appears that the order of removal was executed on the 28th of *November*, so that there was sufficient time for the appellants to give notice, and to come prepared to try it; and the justices, who are to judge of this, thought so. — Rule discharged.

The Quarter Sessions are not bound to receive and adjourn the hearing of an appeal against an order of removal at the next Sessions, if they think the appellants had sufficient time to come prepared to try it, and to give notice to the respondents.

950. *Rex* v. *Justices of Buckinghamshire, H. T.* 43 *G.* 3. 3 *East,* 342. — A rule was obtained calling on the defendants to show cause why a *mandamus* should not issue to them, commanding them to enter a continuance on the appeal of the churchwarden

If, upon an appeal lodged against an order of removal, the Sessions are of

(*a*) See Rex v. Staffordshire Justices, *post*, pl. 951.

opinion that reasonable notice has not been given by the appellant to the respondent parish, they cannot dismiss the appeal on the ground that notice might have been given in time, but are bound by the direction of the statute 9 G. 1. c. 7. § 8. to adjourn the appeal to the next Sessions.

and overseers of the poor of the parish of *S.*, against an order of two justices for the removal of *J. Clarke*, a pauper, from the parish of *W.* to *S.*, as from the last to the next General Quarter Sessions, and at such next General Quarter Sessions to hear and determine the matter of the said appeal. The affidavit on which the rule was obtained stated, that on the 4th of *January* last the pauper was removed under an order of two justices, dated the 3d, from *W.* to *S.*: that on the 5th there was a consultation between several of the parishioners as to the settlement: that on the 6th they advised with their attorney, who on the same day gave the other parish notice of trying the appeal at the next Sessions, which was holden on the 13th. That *W.* is seven miles from *L.*, where the attorney for the appellants resided, and 10 miles from *S.*, the appellants' parish. That the appeal was entered according to the practice of the Court. That the notice required by the Court to be given in case of appeal is eight days (one inclusive, the other exclusive). That the appeal being called on, the counsel for the removants, the parish of *W.*, called on the appellants to prove the notice, which being done, the notice was objected to, as not having been given within a reasonable time before the Sessions, which objection was allowed by the Court. Whereupon the counsel for the appellants insisted, that the appeal should be adjourned agreeably to the stat. 9 *G.* 1. *c.* 7. § 8., and moved the Court to that effect; but the Court dismissed the appeal. — LAWRENCE J. (the only Judge in Court): There can be no doubt upon the construction of the act. Before the stat. 9 *G.* 1. it was supposed that if a parish to which a removal was made appealed to the next Sessions after the order of removal was served upon it, the Sessions were bound to hear and determine the appeal, although the removing parish had not had sufficient time to prepare itself: to remedy which that act was passed, which directs that no appeal from any order of removal shall be proceeded upon unless reasonable notice be given, of which the justices in Sessions are to judge. That is, they are to judge whether such reasonable notice have or have not been given as will entitle either party to proceed upon the appeal: but the act goes on expressly to direct, that if it shall appear to the justices that reasonable notice was *not* given, then *they shall adjourn* the appeal to the next Quarter Sessions. Now here the Sessions have determined, that reasonable notice was not given; notwithstanding which, instead of adjourning the hearing of the appeal as required by the act, they have against the positive direction of it dismissed the appeal. There is no ground for supporting their determination.—Rule absolute.

The justices are bound by stat. 9 G. 1. c. 7. § 8. to receive and adjourn an appeal made to the *next Sessions* after an order of removal made, against such order, if no notice have been given to *the respondent*; *though they*

951. *Rex* v. *Justices of Staffordshire*, *T. T.* 46 *G.* 3. 7 *East*, 549. — An appeal was lodged at the next Sessions after an order of removal made, and was moved to be adjourned, on the part of the appellants; no notice having been given to the respondents: but the Sessions, being of opinion that there had been sufficient time for the appellants to have given such notice after the order had been executed, and before the holding of the Sessions, dismissed the appeal. Whereupon a rule was obtained in the last term, calling upon the defendants to show cause why a *mandamus* should not issue to them commanding them to receive and enter a continuance on the said appeal to the next General Quarter Sessions, and there to hear and determine the matter of the said ap-

peal. This rule was enlarged to the present term on the motion of the defendants' counsel. — But CLIFFORD now moved to make the rule absolute; stating the above facts; and suggesting that the defendants, upon advice taken, were satisfied that they had no discretion to dismiss the appeal unheard, on the ground alleged, as had been once ruled in *Rex* v. *The Justices of the North Riding of Yorkshire* (*a*); the contrary having been since determined in *Rex* v. *The Justices of Bucks* (*b*), upon the construction of the stat. 9 *G.* 1. *c.* 7. § 8., which expressly directs, that "if it shall appear "to the Sessions that reasonable notice was not given, *then they* "*shall adjourn the appeal to the next Quarter Sessions*, and "then and there finally determine the same." — LORD ELLENBOROUGH C. J. said, that the opinion delivered in *Rex* v. *The Justices of Buckinghamshire* had been well considered; and the Court were satisfied that the statute was compulsory on the Sessions in these cases to receive and adjourn the appeal. — PER CURIAM: Rule absolute.

should be of opinion that the order was executed in sufficient time before the Sessions to have enabled the appellants to give reasonable notice of their appeal to the respondents.

(*a*) *Ante*, pl. 949.

(*b*) *Ante*, pl. 950.

952. *Rex* v. *The Justices of Wiltshire*, *M. T.* 49 *G.* 3. 10 *East*, 404. — *Mandamus* to the justices of *Wiltshire* to enter continuances, and hear and determine an appeal on an order of removal from *M.* to *S.* The rule was obtained on an affidavit of the appellant's attorney, stating, that he was applied to by the parish officers of *S.*, on the 19th of *April* last, to enter the appeal, and get it respited until the next Sessions; in consequence of which, notice of appeal, and of the intended motion to respite, was given to the respondents. That the next sessions was held on the 26th of *April*, when the appeal was entered, and respited to the *Midsummer* Sessions, which was held at *Warminster* on the 12th of *July*. On the 2d of *July* the appellant's attorney learnt, for the first time, that the Sessions had made certain rules for their practice, which were not published till after the *April* Sessions, nor acted upon or officially circulated till the *Midsummer* Sessions, by which it was required, that on all trials of appeals, the notice of trial was to be given on or before the *Monday* in the week next before the Sessions, or otherwise the notice to be deemed insufficient; *and that the like notice was to be given in the case of respited appeals*, unless, &c. That on *Tuesday* the 5th of *July*, notice of trial of the appeal was served on the respondents, at six o'clock in the morning, dated the day before, being as soon as the signatures of the parish-officers could be obtained. That the usual notice theretofore required in such cases, in this and the neighbouring counties, was given in this case. That the appellant's attorney attended the *Midsummer* Sessions on *Tuesday*, the 12th of *July*, and on the next day the appeal was called on, when the respondents objected that the notice had not been given in time. That the appellants then applied to the Court for an adjournment under these circumstances, offering to pay the costs of the day; but the Court refused it, thinking they had no power to do so. Affidavits were also read in answer to this rule, alleging, that the new order of practice was made at the preceding *January* Sessions, held at *Devizes*; and that notice of it was immediately after promulgated in the county. That the appellant's attorney lived only five miles from *S.*; and that the litigating parishes were very near to each other. — LORD ELLENBOROUGH C. J. The magistrates certainly had a discretion to exercise with respect to

Though an appeal against an order of removal has been entered and adjourned once by virtue of th statute 9 G. 1. c. 7. § 8. and though the justices in Sessions have a discretionary power to determine whether reasonable notice has been given of the appellants' intention to proceed on the trial of such adjourned appeal, yet if they dismiss the appeal at such adjourned Sessions, without hearing it, on the ground, that they have no authority to try it for want of a sufficient length of notice to the respondents, according to a new rule of practice promulgated two Sessions before but then first acted upon, and which was not known to the appellant's attorney, who

had given the former usual notice, this Court will grant a mandamus to the Sessions to enter continuances, and hear the appeal.

what was reasonable time for giving the notice of appeal; but we have also a kind of visitatorial jurisdiction over them, in the exercise of such a discretionary power; and we think, that in this case they have not exercised that discretion in a way that we ought to give effect to; but that we ought to interfere and correct it. Here it appeared that a new rule of practice, with respect to giving notice, had been recently made by the Sessions, of which the appellant's attorney had no knowledge, but he conformed himself to the former practice; and, under these circumstances, it would be too much to conclude the appellants from having their case heard. — Rule absolute.

IV. *The Sessions to which Appeal must be made.*

See stats. 13 & 14 *Car.* 2 *c.* 12. 3 & 4 *W.* & *M.* *c.* 11. § 10. 8 & 9 *W.* 3. *c.* 30. § 6. 33 *G.* 3. *c.* 55.

The appeal against an order of removal made by *corporation justices* must be to the next Sessions for *the county*, not of *the corporation*.

953. *Rex* v. *Wendover*, *E. T.* 13 *W.* 3. 2 *Salk.* 490. — Two justices of *St. Alban's* made an order, that whereas they were credibly informed, that *W.* was the place of *H.'s* last legal settlement, but no where adjudged to be so; from this order there was an appeal to the Quarter Sessions of *St. A.'s*, where it was confirmed. — Both were now quashed; the first, because there was no adjudication of the place of his last legal settlement; and the second, because the appeal ought to have been to the Sessions of the county, not of the corporation; and as it was, it was *coram non judice*.

The *next Sessions* shall be that which is held, whether by adjournment or otherwise, after an order of removal is served. See *post*, pl. 966.

954. *Rex* v. *Monks Risborough*, *H. T.* 11 *Ann. MSS.* — The Sessions was held on the 5th *October*, and was adjourned to the 19th; on the intermediate 10th day of *October* an order of removal was made, from which an appeal was made to the adjourned Sessions. The question was, Whether this was the next Sessions within the act? — THE WHOLE COURT agreed, that if an order be made before, and not served till after a Sessions, the Sessions next after the service of the order is the next Sessions within the act. — PARKER C. J. said, he took this to be well enough, and that he could not distinguish it from a person's taking the oaths the same term on which he took a place; which had been allowed by Chief Justice *Holt*. — EYRE J. differed, and the case was adjourned.

And the Court will intend it to have been the *next Sessions*, unless the contrary appear. See Rex *v.* Norton, *infra*, pl. 957.

955. *Milbrook* v. *St. John's Southampton*, *H. T.* 1 *G.* 1. *Sett.* & *Rem.* 66. — A person was removed from *M.* to *St. J.'s*, by an order bearing date 12th day of *February*, and they appealed to the *Trinity* Sessions. — Now CROSS moved to quash the order, there appearing to be an intervening Sessions, and so not within the act of parliament. — PARKER and CURIA: You cannot take this objection now it is matter of fact, and perhaps the order was not served till after the Sessions: you should have made this objection then; it is too late to make it now. — Not quashed.

Appeal to the next Sessions by adjournment is good, if the order is made after the original Sessions commenced.

956. *Rex* v. *Hinderclave*, *Viner Abr.* 356. — An order made at the General Quarter Sessions held by adjournment was quashed, because it did not appear that this was the next General Quarter Sessions; for it might be that the Sessions was begun, and continued by adjournment, before the order was made.

957. *Rex* v. *Norton*, *E. T.* 2 *G.* 2. 2 *Str.* 831. — ABNEY excepted to an order of Sessions for discharging an order of removal, because the justices' order was dated the 21st of *June*, and the Sessions' order was not till *Michaelmas* Sessions following, so that *Midsummer* Sessions intervened. To this it was answered, that by the express words of the statute the appeal is to be the next Sessions after the parties find themselves aggrieved, which is not till the removal; and for aught appears, *Michaelmas* Sessions might be the next Sessions after the grievance: And so it was held in the case of the parishes of *M.* and *St. J.*'s, *Southampton*. (*a*) — To this THE COURT agreed, and the Sessions' order was affirmed.

The appeal against an order of removal must be to the next Sessions after the party appealing is aggrieved.

(*a*) *Supra*, pl. 955.

958. *Rex* v. *West Torrington*, *T. T.* 22 & 23 *G.* 2. *Burr. S. C.* 293. — Two justices removed *J. W.* from *W. T.* to *N. T.*, but the Sessions quashed the order. The Sessions was held by proclamation at *K.*, on *Monday* the 9th of *January*, and from thence adjourned to *C.* to *Wednesday* the 7th, &c.; but there was then no Sessions held, pursuant to the said adjournment. At the General Quarter Sessions held at *H.* this appeal was made. — It was objected, first, That the Sessions at *H.* could not take it up at all, for want of jurisdiction, it being held without adjournment; and the case of *Rex* v. *Polstead* (*b*) was cited; and secondly, that the appeal was not made to the next Quarter Sessions. — HEWITT in answer to the first objection said, the first Sessions holden at *K.* was adjourned to *C.*, but none was there holden. Then a Sessions was held at *H.*; at which last Sessions this order was made. But it does not appear that either the first at *K.*, or the second at *C.*, was well holden. For it does not appear before what justices that at *K.* was holden. So that the last might be an original Sessions, in point of law, the two former being null. And secondly, That if the first Session at *K.* was not good, and none was holden at *C.*, then this at *H.* on *Friday* 13th *January* was the next Quarter Sessions. — WILMOT *in reply*. The act of 36 *Eliz.* 3. *c.* 12. expressly directs four Sessions only to be holden in a year, *viz.* within the *utas* of the *Epiphany*, within the second week of *Lent*; between *Pentecost* and *St. John the Baptist*; and within eight days of *St. Michael*. The 12 *Rich.* 1. *c.* 10. directs one in each quarter of the year at least. Then 2 *Hen.* 5. *stat.* 1. *c.* 4. specifies the times of holding them; which are, in the first week after *Michaelmas*, in the first week after *Epiphany*, the first week after the clause of *Easter*, and in the first week after the translation of *St. Thomas the Martyr*; and more often, if need be. This appears to be a General Quarter Sessions holden at *K.*; and an adjournment from *K.* to *C.* (where none was holden); and the third, at *H.*, mentions no adjournment from any former Sessions. — LEE C. J. To be sure, if the first Sessions was well holden, the Sessions was completed, if there was no adjournment of it from thence to *H.*; and the case of *Polstead* is in point. — The order of Sessions was quashed, and the original order confirmed.

If a Sessions be adjourned, and no Sessions held on the adjournment day, an appeal to the Sessions subsequent to the adjournment is not the next Sessions.

(*b*) *Post*, pl. 980.

959. *Rex* v. *East Donyland*, *T. T.* 8 *G.* 3. *Burr. S. C.* 592. — Two justices for the *borough* of *C.* made an order to remove three paupers from *St. G.*'s in *C.* to *D.* The parish of *D.* appealed to the Quarter Sessions of the *borough of C.*, and they *confirmed* the order. — THE COURT agreed, that the borough Sessions had no jurisdiction to make this order of confirmation; and that therefore

An appeal from an order of borough justices must be to the county Sessions.

their opinion and their order were both nugatory: the appeal ought to have been to the Quarter Sessions of the county; and as no such appeal has ever been made, the original order stands. (a)

If there are four days between the removal and the Sessions, the appeal must be to those Sessions.

960. *Rex* v. *Justices of Wilts, T. T.* 12 *G.* 3. *MSS.* — An order was made four days before the Sessions commenced, and the Sessions lasted three days more. The contending parties were not more than ten miles from each other, and the place of the Sessions not above eight miles distant from the party complaining. On showing cause against the issuing of a *mandamus* to the justices to receive and hear the appeal, it was insisted, that the party had time enough to have appealed to the next Sessions; that at least they ought to have entered their appeal, and adjourned it, agreeable to the mode prescribed by 13 & 14 *Car.* 2. They admitted that cases might be put where the Sessions were at liberty to receive and hear the appeal, after the Sessions next ensuing the order of removal; but that here the parish-officers had been guilty of laches and neglect, and therefore ought not to be favoured or assisted. On the other side it was insisted, that the present was as favourable as any case could be for the assistance of the Court; for there was great reason to believe that the parties removing had ensnared or compelled the pauper to marry a woman whilst he was under age; that he had obtained a licence, and was, as he supposed, prevailed upon to do so, when he was not of age; that his father swore he was under age, which strengthened this suspicion; that there was not a reasonable time for the parties to inquire into the facts, in order to judge of the propriety of appealing; that the act of the parish is merely directory, and the Sessions were not bound to refuse an appeal, because not made at the Sessions immediately following the order of removal; that the Court will always intend the appeal to be in time (if possible) as appears by *Stade and North Bradly* in *Strange*; at least they will never assist in presuming the limitation mentioned by the act to be incurred where they can help it. — LORD MANSFIELD: The single question is, Whether the Sessions have done wrong in admitting the excuse offered, for not appealing at the next Sessions after the order of removal? for all the facts of imputation thrown out against the removing parties are out of the case. Whether there is sufficient time for not appealing, must depend upon the facts of every case. Here the two contending parishes, and the place where the Sessions were held, were within ten miles or thereabouts. It is said, the parish wanted to know if the wife of the pauper was settled with him, which depended upon the age of him; a fact they might have known in less than half an hour. Besides, what is the case that they desire to be let in to prove? Not a favourable one, but the reverse. It is, that the father may be at liberty to swear against the son, and prove him perjured, which I would never suffer to be done. Here the parish-officers were negligent. — THE COURT

(a) The same point in Rex v. Malden in Essex, M. T., 11 Ann. — By *Parker* C. J.: Where there is a *town-corporate* that has Sessions of its own, and the justices of that town make an order there, if the parties will appeal, they must appeal to the county Sessions, and not to their own Sessions: for then there would be an appeal *ab eodem ad eundem*; there being, may be, the same justices sitting who made the order. Cases of Sett. page 6. pl. 10. See also the 3d vol. of Mr. Douglas's History of Controverted Elections, 112. 141.

were unanimous for discharging the rule for the *mandamus*. — Rule discharged.

961. *Rex* v. *Justices of Devonshire, T. T.* 17 *G.* 3. *Cald.* 32. — A *mandamus* was moved for to be directed to the justices, to hear an appeal to an order of removal from *W.* to *P.* It appeared upon the affidavits, that the order of removal was dated *October* 21, 1776: in *November* the pauper was removed. Some time afterwards it was agreed between the two parishes, that the question should be decided by the opinion of HEATH, *Serjeant;* provided such opinion were given on or before the 14th of *January*, the Sessions beginning on the 15th. It was also agreed, that no other instructions should be given to the counsel than the examination of the pauper. On the 10th of *January* the opinion was given. The same day the officers of *W.* told the officers of *P.* that the opinion was not decisive. At the *Easter* Sessions following, the parish of *P.* appealed; but the justices refused to enter into it, as not being in time. — BULLER early in the term moved for the *mandamus*, on the ground, that under the agreement the opinion in favour of the parish of *P.* was conclusive; and that the parish of *P.* had appealed in consequence of objections raised to this decision *subsequent to the Epiphany Sessions;* and therefore that the statutable limitation of appeal to the *next Sessions* ought, during the time the parties were under terms of compromise, to be suspended. — FANSHAWE and MILLES now, on the last day of the term, showed cause; and having fully satisfied the Court upon the fact of the appeal having been prevented in consequence of the objection not having been raised *previous to the Epiphany Sessions:* — LORD MANSFIELD said, That as both parties had agreed that this question should be submitted to counsel, and that his opinion should conclude, though the Court does not quite agree with the counsel in point of law, they would not, had the opinion been positive, have granted the *mandamus*.

The time limited for appealing against an order of removal is not suspended by the matter being referred to arbitration, if the award is not final. Vide Rex v. Justices of Northampton, *ante*, pl. 936.

962. *Rex* v. *The Justices of Gloucestershire, E. T.* 19 *G.* 3. *Dougl.* 191. — On an application for a *mandamus* to compel justices to receive an appeal from an order of removal, it appeared from the affidavits on which the rule was obtained, that the examination of the pauper was taken in *August;* the order of removal dated the 12th of *November* following; and the Sessions, where the appeal was tendered, held on the 12th of *January* in the ensuing year; that no notice of appeal had been served (for which the reason assigned was, that the appellants had not been able to get their witnesses ready, till it was too late to give such notice); that the Court had been moved to receive the appeal, and adjourn the consideration of it till the following Sessions, and had refused. — THE COURT were clearly of opinion that the justices ought to have received the appeal. — The rule made absolute.

The justices are bound to receive an appeal against an order of removal, if offered at the next Sessions, though no notice of appeal had been given.

963. *Rex* v. *The Justices of East Riding, Yorkshire, E. T.* 19 *G.* 3. *Dougl.* 102. — MANDAMUS to receive an appeal. The order of removal had been made by the two justices on the 22d of *September*, but the pauper was not removed till the 5th of *October*. *H.* the place to which the pauper had been removed from *W.*, is 66 miles from *N.* where the Sessions began on the 6th of *October*. At that Sessions no appeal was entered, that at the *Epiphany* Sessions following, which began on the 12th of *January*, the parish having offered an appeal, the justices refused to hear it, thinking

If, from the distance between the parish removed to, and the place where the Sessions are held, there is not time to lodge an appeal, the next Sessions ensuing

are to be considered as *the next Sessions.*

themselves bound by the words of the statute of 13 & 14 *Car.* 2. c. 12. § 2. which says, that persons aggrieved may appeal to the justices of peace "at the *next* quarter Sessions." — THE COURT said, that "by *next Sessions*" the statute of *Car.* 2. must have meant the next *possible* Sessions; and that, here, it was impossible for the appellants to lodge their appeal at the *Michaelmas* Sessions.

If there are two intervening days between the removal and the Sessions, the appeal must be lodged at *those* Sessions though the places are twenty miles asunder.

964. *Rex* v. *The Justices of Herefordshire, M. T.* 30 G. 3. 3 *T. R.* 504. — A rule had been obtained on the defendants to show cause why a *mandamus* should not issue, commanding them to receive an appeal against an order of removal. The order was made on *Friday* the 18th of *April;* on the 19th the pauper was removed; and on the *Tuesday* following, the 22d, the *Easter* Sessions were held at *H.*, twenty miles distant from the parish to which the party was removed; at which Sessions it is the practice not to receive any appeal after the *Tuesday* morning. The parish not having appealed at those *Easter* Sessions, the justice at the *Midsummer* Sessions refused to receive the appeal, because not made at the *next* Quarter Sesssions, according to the 13 & 14 *Car.* 2. *c.* 12. § 2. The foundation of this application was, that as the officers of the parish to which the pauper was removed, had not sufficient time to convene a meeting of the inhabitants, in order to take their opinion upon the subject, whether there were any grounds for the appeal, the *Midsummer* Sessions were the next *possible* Sessions. — LORD KENYON C. J. The words of the act of parliament are very strong; and they require the appeal to be made at the Sessions next after the grievance. Where, indeed, an order of removal has been made some time before, and only executed a very short time before the Sessions, so that there was no possibility of appealing to those Sessions, this Court has interfered by granting a *mandamus* to compel the justices at the following Sessions to receive the appeal, because the words "next "Sessions" mean "the next *possible* Sessions." (*a*) But this is a very different case; for there were two intervening days after the execution of the order and before the *Easter* Sessions; and if there was not sufficient time before those Sessions to give reasonable notice of appeal, the appeal might have been then entered and adjourned, according to the statute 9 *G.* 1. *c.* 7. § 8. — THE THREE OTHER JUDGES concurring, rule discharged.

(*a*) Rex *v.* The Justices of Yorkshire, *ante*, pl. 963.

Where the Quarter Sessions are held at two different places in the county, the one being an adjournment only of the other, and an order of removal is executed after the beginning of the original Sessions, but before the adjourned Sessions, an appeal *at the* next en-

965. *Rex* v. *The Justices of Sussex, H. T.* 37 *G.* 3. 7 *T. R.* 107. — A rule was obtained in the last term calling on the defendants to show cause why a *mandamus* should not issue, directing them to receive and hear an appeal against an order for the removal of *T. Laycock*, his wife and children. It appeared that in point of fact there are two divisions, though not legally recognized, in the county of *Sussex*, the eastern and western, though there is but one commission of the peace for the whole county; and the Quarter Sessions are always held first in the western, and afterwards adjourned into the eastern division. The Sessions commence in the western division on the *Tuesday*. The removal in question was made on the *Wednesday*, being the 13th *July* 1796, to the parish of *P.*, which is situated in the eastern division; the adjournment-day into which was on the *Friday* following. The appeal was not lodged at that Sessions, but was preferred at the next *October* Sessions held by adjournment in the same eastern division. An

objection was there made that it came too late, and the Sessions, after hearing evidence of the facts, and taking into consideration the distance of the appellant parish, were of opinion that the adjournment Sessions in *July* were the next possible Sessions at which the appeal ought to have been preferred; that it was now too late, and that they had no jurisdiction to examine into the merits of the appeal. — LORD KENYON C. J. The convenience and justice of the case are so obviously in conformity with the strict letter of the statute (*a*), that there can be no doubt on the proper construction of it. There is but one commission of the peace, and one quarter Sessions held for the county in each quarter; although for convenience the magistrates hold the Sessions first in one part of the county, and then by adjournment in the other part. The next Quarter Sessions, therefore, must necessarily mean the next original Quarter Sessions held for the county; for the adjournment is only a continuation of the same Sessions. The removal, therefore, having been made after the commencement of the *July* Sessions, the appeal was properly preferred at the *October* Sessions following. Neither is there any thing in the objection that it ought then to have been made to the original Sessions in *October*, for that would be directly contrary to the practice which has always prevailed in counties where the Sessions are adjourned from one place to another within the county; and his Lordship referred to *Rex* v. *Monks Risborough* (*b*), and *Rex* v. *Hinderclave*. (*c*) — PER CURIAM: Rule absolute.

suing adjourned Sessions is in time, and ought to be received.

(*a*) 43 Eliz. c. 2.

(*b*) *Ante*, pl. 954.

(*c*) *Ante*, pl. 956.

966. *Rex* v. *The Justices of Flintshire* (*d*), *E. T.* 37 *G.* 3. 7 *T. R.* 200. — This was a rule calling on the defendants to show cause why a *mandamus* should not issue, commanding them to receive an appeal against an order of two justices, by which *T. Kirkham* and his wife and family were removed from *M.* in the county of *Flint*, to *L.* in *Staffordshire*. — The order was dated on the 24th of *September* last, and executed on *Monday* the 3d of *October*, at four o'clock in the afternoon, at *L.*, which is at the distance of 54 miles from *M.*, where the *Flintshire* Sessions were holden on *Thursday* the 6th of *October*. No appeal having been entered at those Sessions, the justices at the *January* Sessions refused to receive the appeal, though it was stated to them, and now verified by affidavit, that the overseer of *Mold* who conveyed the paupers to *L.* could only speak the *Welsh* language, and that the overseer at *L.* who received them could not understand him; that near a week elapsed before the parish of *L.* could gain any information respecting the settlement of the paupers, and, consequently, that they were not in a situation to appeal at the *Michaelmas* Sessions. — LORD KENYON. C. J. We ought not to decide hastily against the words of an act of parliament; but some reasonable time ought to be given to the parish appealing, to enable them to inquire whether or not it will be proper to enter an appeal. In this case the order of removal, which was made on the 24th of *September*, was kept in the overseer's pocket until the eve of the Sessions, and was then executed at the distance of more than 50 miles from the place where the appeal was to be lodged. And though the Sessions were holden at *M.* on *Thursday*, in general they are holden on *Tuesday*, and the overseers of *L.* might fairly have conceived that the Sessions for *Flintshire* would be holden on the very next day after the order was executed. Under these circumstances, therefore, I

An appeal against an order of removal may be entered at the next Sessions but one after the order is executed, if there be not a reasonable time betwixt the execution of the order and the next Sessions, to make inquiry respecting the pauper's settlement.

(*d*) See Rex *v.* Surrey Js. *post*, pl. 968.

think that these justices at the following Sessions in *January* ought to have received this appeal, and, consequently, that this rule should be made absolute. — PER CURIAM: Rule absolute.

A warrant to arrest the party "to the end that he may become bound, &c. to appear at the *next Sessions*, &c." means the next Session after the arrest, and not after the date of the warrant. Therefore the officer executing it may justify an arrest after the sessions next ensuing the date of the warrant.

967. *Mayhew* v. *Parker*, *H. T.* 39 *G.* 3. 8 *T. R.* 110. — In trespass for an assault and false imprisonment the defendant gave in evidence a warrant under the hand and seal of Lord *Kenyon*, which, after reciting that it was certified that at the General Session of oyer and terminer at the *Old Bailey* on the 11th of *January* 37 *G.* 3., the plaintiff was and stood indicted for perjury, to which indictment he had not appeared or pleaded, required and commanded the defendants (peace officers) to apprehend the plaintiff and bring him before one of the judges of the Court of King's Bench, &c. "to the end that he may become bound with sufficient "sureties for his personal appearance at the next Sessions of oyer "and terminer of our Lord the King, to be holden for the city of "*London*, to answer the said indictment, and be further dealt with "according to law;" dated the 21st of *January* 1797. It appeared that the arrest was not actually made until about 10 months afterwards. It was objected at the trial before Lord *Kenyon* at the last sittings at Guildhall that, as the arrest was not made before the *Old Bailey* Sessions next ensuing the date of the warrant, the warrant was no longer in force, and could not justify an arrest and imprisonment afterwards: but Lord *Kenyon*, being of a different opinion, nonsuited the plaintiff. — GARROW now renewed the same objection on a motion to set aside the nonsuit; and said that the usual practice in these cases was to renew these warrants at every Sessions if not executed before, and that great inconvenience would ensue if it were otherwise, as warrants of arrest might be kept back to answer particular purposes, and not executed till long after they were granted. — But LORD KENYON C. J. said, that the fair construction of such a warrant was, that the party to be arrested should be made to appear at the *next Sessions after the arrest;* and that the only purpose which the practice alluded to could answer was that of enhancing the expence to prosecutors, and putting money into the pockets of the officers. That, if any person misconducted himself by keeping back warrants of arrest to be afterwards made use of for vexatious or improper purposes, he subjected himself to an action for a malicious prosecution at the suit of the party grieved: but the warrant was a sufficient justification in trespass to the officer charged with the execution of it. — PER CURIAM: Rule refused.

Where an order of removal was made and executed on the day before the holding of the *Epiphany* Sessions, and the appeal was entered, and due notice given for the *Easter* Sessions, at which Sessions the justices refused to hear

968. *Rex* v. *Justices of Surrey*, *E. T.* 53 *G.* 3. 1. *M.* & *S.* 479. — *Mandamus* to the justices of *Surrey*, to receive an appeal against a removal of a pauper from *R.* to *M.* The affidavit stated that the order of removal was dated the 11th of *January* last, and was executed in the afternoon of that day. That the Quarter Sessions for the county of *Surrey* began on the 12th, and that there was not sufficient time to procure any information respecting the pauper's settlement, or the requisite evidence to support an appeal, or even to ascertain whether such appeal ought to be made. That, according to the practice of the Sessions for that county, notice must be served on the respondent parish by the appellant, of their intention to try such appeal, at least six clear days before the commencement of the Sessions; that due notice having been given

for the *Easter* Sessions, the appeal was then entered; but the Court refused to hear the appeal, on the ground that it ought to have been entered at the *Epiphany* Sessions, and respited until the next Sessions. Against the rule, an affidavit of the clerk of the peace stated, that by the course and practice of the Sessions for that county, they always adjourned for a certain time, and appeals against orders of removal are allowed to be lodged at any time during the sitting of the Sessions, or at the adjournment held next after the making such order, without requiring notice to be given to the respondents. And that the consideration of such appeal is thereupon adjourned to the next Quarter Sessions after those at which it is so lodged. That the last *Epiphany* Sessions commenced on the 12th of *January*, and lasted 14 days, when they were adjourned to the 2d of *February* following (which adjournment lasted one day), and was again adjourned to the 1st of *March*, which lasted two days. — LORD ELLENBOROUGH C. J. The statute does not contemplate the continuance of the Sessions. It enacts, that the party may appeal "to the next Quarter Sessions," without adding "or some adjournment thereof." It takes the holding of the Sessions at the point of time to which it refers the appeal; and the Sessions are always considered in law as one day, to whatever period they may by accidental causes be extended. The appellant parish ought to have a reasonable time allowed for considering whether they will appeal or not. The question is, Whether the interval between the 11th and 12th of *January* was a reasonable time for that purpose. We are of opinion that it was not. — BAYLEY J. referred to *Rex* v. *Justices of Flintshire*. (*a*) — Rule absolute.

the appeal, on the ground that it should have been entered at the *Epiphany* Sessions; the Court granted a mandamus to the justices to receive such appeal, notwithstanding it appeared that the *Epiphany* Sessions continued for 14 days, and were afterwards twice adjourned to distant days, and that it was the practice of the Sessions to allow appeals to be entered at any time during their continuance, or at the adjournments, and respite the hearing till the next Sessions.

(*a*) *Ante*, pl. 966.

969. *Rex* v. *Justices of the West Riding of York*, *T. T.* 55 *G.* 3. 4 *M.* & *S.* 327. — An order of removal from a township in the *West Riding* to the parish of *St. Luke* in *Middlesex*, was dated on the 3d of *January*, and executed on the 12th, and the *Epiphany* Sessions for the *West Riding* were holden on the 18th. The parish of *St. Luke* did not appeal to those Sessions, but offered to appeal at the *Easter* Sessions in *April*, when the justices refused to receive the appeal. A rule *nisi* was obtained for a *mandamus* to the justices to receive the appeal, on the ground that the order was executed too near the time of the *Epiphany* Sessions, to make it practicable to appeal to them, considering the distance of the parish of *St. Luke* from the place where those Sessions were holden. It was contended against the rule, that there was time for the parish to have entered and respited their appeal at the *Epiphany* Sessions, which was all that could be required of them, (*Rex* v. *Justices of Herefordshire*.) (*b*) But granting that they were not bound so to do, yet they ought to have come prepared at the next Sessions not only to enter, but to try the appeal, and ought to have given notice to that effect to the respondents, whereas they gave no notice, and were not in a condition to be heard, but only to enter and respite their appeal at the *Easter* Sessions. In support of the rule it was said, that the ground on which the justices refused to receive the appeal, was, that it was out of time, and not on account of the objection last stated; and it was farther insisted that the appellants were entitled to ask to

Where an order of removal from a township in *Yorkshire* to a parish in *Middlesex* was executed on the 12th of *January*, and the *Yorkshire Epiphany* Sessions were holden on the 18th, and the parish did not appeal until the *Easter* Sessions, when the justices refused to receive the appeal, this Court would not grant a mandamus to the justices to receive the appeal, it appearing that the appellants were not ready to enter and try

(*b*) *Ante*, pl. 964.

their appeal at the *Easter* Sessions, but only to enter and respite.

enter and respite their appeal, for if an appeal to the next practicable Sessions is an appeal to the next Sessions, it is so with all its consequences, one of which is, that the appellant has a *right* to have it adjourned to the following Sessions. — LE BLANC J. We do not think that the parish were entitled strictly to pass over the first Sessions; but if they had done at the second as much as they ought to have done, the Court would have relieved them. The parish might possibly have gone in the first instance to the *Epiphany* Sessions, but they have not done this, and have also not placed themselves in a situation to be heard at the second Sessions; the Court, therefore, do not see a sufficient ground for granting a *mandamus*. — Rule discharged.

Where an order of removal was served on the appellant parish on *Saturday*, and the Sessions were holden on the following *Tuesday*, and the appellant parish was thirty-seven miles from the place where the Sessions were holden, but there was no appeal to those Sessions, and the justices refused to receive the appeal at the next Sessions, the court granted a mandamus.

970. *Rex* v. *Justices of Essex, M. T.* 58 *G.* 3. 1 *B.* & *A.* 210. — Upon showing cause against a rule calling upon the defendants to show cause why a mandamus should not issue, commanding them to receive and hear an appeal against an order of removal, by which a pauper was removed from *T.* to *W.*; the following facts appeared upon the affidavits. The order was made on *Tuesday* the 8th *July* 1817, and was served about 12 o'clock on the following *Saturday*. The distance between the respondent and appellant parishes was 24 miles distant from *C.*, where the Sessions were held on the *Tuesday* following, and lasted four days; and by the practice of that Sessions, a motion to enter and respite the appeal might have been made at any time during the Sessions. The parish not having appealed at the *July* Sessions, the justices refused to receive the appeal at the *Michaelmas* Sessions, on the ground that that was not the next Sessions within the meaning of the stat. 13 & 14 *Car.* 2. *c.* 12. *s.* 2. The cases of *Rex* v. *The Justices of Herefordshire* (*a*), was cited. — LORD ELLENBOROUGH C. J. The stat. 13 & 14 *Car.* 2. certainly directs the appeal to be at the next Quarter Sessions, but that must mean the next practicable Sessions. The parish-officers must have a reasonable time allowed them to make the necessary inquiries, that they may judge of the propriety of appealing or not. The notice here is served on the *Saturday*. I am of opinion that they are not bound to devote *Sunday* to such a purpose. They have then only one entire day, *i. e.* the *Monday*, to get the necessary information, and to consider whether they will appeal or not, and that in my judgment is not sufficient. It has been said, that although the appeal could not have been heard at those Sessions, still that it ought to have been entered and respited: but that would only be incurring a useless expence, without conferring any benefit on either party, and was therefore quite unnecessary. — Rule absolute.

(*a*) *Ante*, pl. 964.

Where by charter the magistrates of a borough, which was a county of itself, held only General Sessions twice a year, and not Quarter Sessions: Held, that an appeal against an order of removal

971. *Rex* v. *Justices of the Borough of Carmarthen and County of the same Borough, H. T.* 1 & 2 *G.* 4. 4 *B.* & *A.* 291. — Two justices of the borough of *C.*, on the 23d *May* 1820, by their order, removed a pauper from the parish of *St. P.*, in that borough, to the parish of *N. C.*, in the county of *C.* Against this order, the parish of *N. C.* appealed, and in their notice of appeal stated their intention of appealing to the next Quarter Sessions of the borough of *C.* At the next Sessions (which, it appeared, were the General and not the Quarter Sessions) for the borough, held on the 21st *September* last, the parties accordingly attended, and applied for leave to lodge the appeal; but the magistrates refused the application. — ABBOTT C. J. I am of opinion, that the true

construction of the 8 & 9 *W.* 3. *c.* 30. is, that if there be an appeal to the Sessions of a town which is a county of itself, where, by charter only, General Sessions are held, it must be made to the General Sessions. Here the magistrates are empowered to hear and determine upon all articles within the borough, which according to law, belong to the office of justices of the peace in their Quarter Sessions, or otherwise, to determine. Now this is a very large expression, and comprehends, as it seems to me, a power to decide upon orders of removal. As to the other objection, it appears that there are three magistrates, at least, qualified to act, and a sessions of the peace may, it is known, be held before two magistrates. The act of parliament, to which a reference has been made, only applies to corporations or franchises, where there are not more than four justices altogether; and, besides, it does not apply to appeals against orders of removal. Upon the whole, therefore, I am of opinion, that this rule ought to be made absolute.

might be made to the next general sessions of the peace for such borough.

972. *Rex* v. *Alnwick*, *M. T.* 2 *G.* 4. 5 *B.* & *A.* 184. — Two justices, by their order, dated the 6th *August* 1814, removed *M. W.*, a pauper, from *A.* to *H.* On an appeal against this order at the *Michaelmas* Sessions in 1820, it was discharged, subject to the opinion of this Court upon the following case: The pauper, at the time the above order, dated 6th *August* 1814, was made, was extremely ill, and in such a state of health, that she could not be removed without danger; the execution of the order was, therefore, suspended by an indorsement thereon in the usual form. On or about the 6th *September* 1814, a copy of the said order of removal and indorsement was delivered to and served upon one of the overseers of the poor of *H.*, by a person sent and authorised by one of the overseers of the poor of *A.*, such person not then having the order with him; and on the 4th *October* 1815, another part of the original order of removal and indorsement was delivered to and served upon one of the overseers of the poor of *H.* by the overseers of the poor of *A.* This last-mentioned document, so served on the 4th *October* 1815, had not been executed by the removing justices on the 6th *August* 1814, but was executed by them in *September* 1815. It, however, bore date the 6th *August* 1814. The order originally executed was not at any time shown to any of the overseers of *H.* The suspension of the execution of the said order, on account of the sickness of the pauper, was taken off in *August* 1819, and a further order was then indorsed by the justices on the order of removal for the payment, by the overseers of *H.*, to the overseers of *A.*, of the sum of 16*l.* 17*s.* 5*d.*, being the charges proved upon oath to have been incurred by the suspension of the order of removal. On the 5th of *September* 1820, the pauper was duly removed from *A.* to *H.*, and an appeal against the order of removal was entered at the *Michaelmas* Sessions, 1820. When the case was called on, and the facts above stated had been proved, it was contended, on the part of the respondents, that the appellants could not be heard, as they had omitted to appeal against the order of removal within the time allowed by law: the 49 *G.* 3. *c.* 124. § 2. enacting, that when the execution of any order of removal shall be suspended, the time of appealing against such order shall be computed according to the rules which govern other like cases from the time of serving such order, and not from the time of making such removal under and by virtue of the same.

An order of removal was dated 1st *August*, 1814, and an order of suspension indorsed thereon, in consequence of the sickness of the pauper; and a copy of such order and indorsement was, in 1814, served upon the appellants, but the original order not produced at the time of serving such copy; and subsequently, in 1815, another part of the order and indorsement executed by the same Justices, but bearing date in *August*, 1814, was served upon the appellants. The pauper was not removed till 1819, when an appeal was duly entered: Held, that the services of the original order of removal in 1814 and 1815 were both defective, and that the appeal was made

in time, notwithstanding 49 G. 3. c. 124. § 2.

— THE COURT, however, permitted the case to proceed, and the appeal was allowed. — ABBOTT C. J. The objection made here to the judgment of the Court of Quarter Sessions, is, that they have allowed this appeal, when, in point of law, the appellants were not entitled to it, not having appealed within the time allowed by law. That question depends entirely upon the validity of the service of the order. Now, that service, in order to be valid, must be either by delivery of the order itself, or by leaving a copy of the order, and at the same time producing the original. It is admitted, that the service in 1814 was defective; but then in 1815 there was a second service. Now, if that was the service of a copy, it was bad, for the same reason as vitiated the previous service. It is, however, contended, that this was the service of a new original order. But if we were to hold that to be so, we should, as it seems to me, give to it an effect not intended by the justices who executed it; for if they had intended it as a new order, they would have given to it a date corresponding with the time of its execution. I think that they never could have intended it as a new order, but only as an authenticated copy of their former order; and that the Court of Sessions were right in so treating it. In that view of the case, it is clear that both services are defective, and, consequently, that the appeal was in time, and the order of Sessions is therefore right. — Order of Sessions confirmed.

V. *Of Adjournment.*

The Quarter Sessions may adjourn the hearing of an appeal from an order of removal. S. C. Salk. 605. 12 Mod. 260. Comb. 365.

973. *Rex* v. *King's Langley, T. T.* 11 *W.* 3. *Ld. Raym.* 481. — Exceptions were taken to an order made at the General *Quarter* Sessions of the justices of the peace, upon an appeal *to them* made from an order of removal; and the exception was, That the appeal was lodged at the next Quarter Sessions, and that it appears upon the face of the order that it was not then determined, but that it was adjourned over for further consideration. — And it was held by THE WHOLE COURT, that they might well adjourn an appeal upon debate for farther consideration.

The sessions cannot be adjourned beyond the time mentioned in the 2 Hen. 5. c. 4.

974. *Rex* v. *Grince, T. T.* 4 *G.* 1. *MSS.* — The adjournment of a Sessions is not to be to a time beyond that fixed by 2 *Hen.* 5. *c.* 4. for the holding another original Sessions.

The sessions, in making an order under an adjournment, must state when the sessions commenced.

975. *Rex* v. *St. Michael, Ipswich, E. T.* 2 *G.* 2. *Str.* 831. — An exception was taken to the order of Sessions that it is said to be made at a Sessions held by adjournment such a day, and does not show that the Sessions commenced within the time prescribed by the act: it should have been *ad sessionem inchoatam* such a day, and held by adjournment after. — And for this fault the order of Sessions was quashed.

An order made at an adjourned sessions must shew when the original sessions commenced.

976. *Rex* v. *Harrowby, E. T.* 10 *G.* 2. *Burr. S. C.* 102. — Two justices made an order on the 13th of *January* 1736, for the removal of *Ellis* and his wife from *A.* to *H.* Upon appeal to an adjourned Sessions holden upon the 4th of *May* following, this adjourned Sessions confirmed the order of two justices; but it did not appear when the original Sessions were first holden. Intermediately, *viz.* on the 20th of *April*, two justices (one of whom was the same

person that made it) called in the first order, and made another, by which latter order they removed the paupers from *A.* to *R.* Upon an appeal from this latter order, the Sessions adjourned all the proceedings to the next following Sessions. — THE COURT were clear, that the second order made by the two justices was irregular, as being made pending the first, and before any appeal, and without showing any subsequent settlement to have been gained; and all that was done upon that second order of the two justices is therefore out of the case. But the first order of two justices has no objection at all made to it; and therefore, though the confirmation of it at Sessions be invalid, because it does not appear when the original Sessions were holden, yet the first order itself must be confirmed.

977. *Rex* v. *Heptonstall*, *T. T.* 10 *G.* 2. *Burr. S.C.* 88. — Two justices removed *Helliwell* from *H.* to *E.*; and the Sessions, on appeal, discharged the order. It was objected, that in *the caption* of the order the Sessions are said to be holden on such a day by *adjournment*, but it does not appear when the *original Sessions* were holden. — PER CURIAM: This is a *fatal* exception. The order must be quashed.

An order made at an adjourned sessions must state when the original sessions were holden.

978. *Rex* v. *Hedingham Sible*, *T. T.* 10 & 11 *G.* 2. *Burr. S. C.* 112. — Two justices removed *Clarke* from *F.* to *H.*; and, on appeal, the order was quashed. It appeared on these orders, with others made between the same parishes, that an order had been made at Sessions referring the question in this case to the determination of the judge of assize, but without any particular *continuance* of the appeal being entered. It was objected, that the third of the before-mentioned orders not having continued the appeal by a proper adjournment, but only referring it to the judge of assize, without reserving the determination to themselves after they should know his opinion, this was a discontinuance of the appeal, and the Sessions could not take the matter up again; and consequently the fourth order (which discharged the original order) was a bad one. And the counsel who was on the other side for *F.* did not pretend to support it. — LEE C. J. The former is only a conditional reference to the judge of assize, without any continuance or adjournment; the latter, therefore, cannot be valid.

If the Sessions refer a case to the assizes, they must state a proper adjournment of the sessions.

979. *Rex* v. *Stansfield*, *E. T.* 16 *G.* 2. *Burr. S. C.* 205. — Two justices, by an order dated 12th *April* 1742, removed *Barratt* from the township of *Stansfield* in the parish of *Heptonstall*, to the township of *Spotland* in *Rochdale*. The *Pontefract* Sessions, held the 27th *April*, 15 *G.* 2., upon an appeal by *Spotland*, ordered the appeal to be respited to the next General Quarter Sessions of the peace to be holden by adjournment at *Bradford* in and for the said riding. At the General Quarter Sessions holden at *Skipton*, in and for the said riding, on *Tuesday* the 13th day of *July*, 16 *G.* 2. before, &c., the same Sessions was adjourned until *Thursday* the 15th day of the said month of *July*, at ten of the clock in the forenoon, to be holden at *Bradford*, in and for the said riding. On the said *Thursday* the 15th day of *July*, the same General Quarter Sessions was holden by the said adjournment, at *Bradford*, in and for the said riding. At which General Quarter Sessions continued and holden at *Bradford*, it was ordered to be discharged. — FAWKES excepted, first, That the appeal being given by 13 & 14 *Car.* 2. *c.* 12. § 2. to the next Quarter Sessions, they ought to

The Sessions may adjourn an appeal to an adjourned sessions. See Rex v. Justices of Sussex, *ante*, pl. 965.

have entered into the merits of it themselves, and had no power to adjourn it at all. Secondly, that at least they should have adjourned it to the next *original* Quarter Sessions, but certainly could not adjourn it to a Quarter Sessions to be holden by adjournment. — THE COURT thought the *Pontefract* order well enough as to the adjournment. — DENNISON J. said, the places of holding adjourned Sessions were very well known in *Yorkshire*.

The Sessions cannot be adjourned without entering a *continuance* of it. See Rex *v.* Yarpole, *ante*, pl. 937.

980. *Rex* v. *Polsted*, *H. T.* 20 *G.* 2. 2 *Stra.* 1262. — An appeal was made to the Quarter Sessions in *Suffolk*, held the 7th of *April* 1746, against an order of removal. The Sessions was adjourned to the 9th of *April* at *Woodbridge*, where for want of a sufficient number of justices nothing could be done. The 11th of *April*, a Sessions was held at *Ipswich*, and adjourned to the 14th at *Bury*, where the appeal was allowed. It was moved to quash the order of Sessions, as made without jurisdiction, the Sessions ending for want of an adjournment at *Woodbridge*. — And of that opinion was THE COURT; for the words in 2 *Hen.* 5. *c.* 4. "and more "often if need be," were never considered as giving more than one original Sessions in a quarter, but only empowering adjournments. — The country must take notice of adjournments, but are not supposed to expect a new Sessions till the usual time. — The order of Sessions was quashed.

The adjournment of a sessions must be made by the same number of justices as are necessary to hold it.

981. *Rex* v. *Westrington*, *H. T.* 23 *G.* 2. *MSS.* — If there are not justices enough to hold a Sessions, there are not enough to adjourn it legally, and every act done after such an adjournment is void.

If the justices at sessions are equally divided, and no order made nor the sessions adjourned, no order can be made at a subsequent sessions.

(*a*) See Rex *v.* Justices of Leicestershire, *post*, pl. 1006.

982. *Bodmin* v. *Warligen* (*a*), *M. T.* 23 *G.* 2. *MSS.* — On appeal to the Sessions from an order of removal, there being only two justices, and they divided in opinion, no order was made, but an entry by the clerk of the peace that the appeal was lodged, and nothing done in it. One of the parishes gave fresh notice of appeal to the next Sessions, when the justices proceeded in it, and quashed the order. — PER CURIAM: The difficulty arises from the penning the entry by the clerk of the peace. If they were divided equally in opinion, that was a sufficient warrant for the clerk of the peace to have entered an adjournment, and it was his duty so to have done. If the parties will not consent to quash both orders, we will consider whether we cannot send it down to have the entry of the first order amended. — And in this term, 24 *G.* 2., the rule was made absolute for quashing, because made without adjournment; but no opinion was given.

The Sessions cannot hear an appeal at a future session, unless the session has been adjourned.

983. *Rex* v. *Justices of Westmoreland*, *H. T.* 29 *G.* 2. *MSS.* — NORTON showed cause against a rule obtained by GOULD for a *mandamus* to the justices of *W.* to proceed to hear and determine an appeal from an order of two justices removing a pauper from *Abbey Leonard* to *Crosby Ravensworth*. If there be an appeal to a Quarter Sessions, and nothing done at that Sessions, I apprehend the appeal falls to the ground; the order is of course confirmed; and the justices cannot at a future Sessions resume it: it is a discontinuance of the suit, which is then absolutely at an end. It has been formerly doubted, whether the justices could adjourn an appeal at all; nobody ever dreamed then that without an adjournment it could be taken up at a future Sessions. At *Christmas* Sessions

1754, there was a hearing on this appeal; but differences arising, and the justices having doubts, there was a reference for the opinion of the Judges who should come the next northern circuit. I apprehend the justices had no power to make such an order of reference, at least not without consent of parties. This was not merely a reference to the judges with a view of having their advice, but an absolute resignation of their power by the justices to the two judges, by whose opinion the matter was to be absolutely determined. Such a reference I apprehend they had not power to direct, *Rex* v. *Harvey*. (a) It was a part of the order, that the appellants should draw up their case against the next *Easter* Sessions. They did not. At *Midsummer* Sessions the appellants came, and at the assizes, the parties producing different states of the case, the judges did nothing in it. — THE COURT inclined to grant the *mandamus*, if the justices would not proceed, but enlarged the rule for further consideration.

(a) See Rex v. Justices of Northampton, *ante*, pl. 936.

VI. *Of stating a special Case.*

984. *Anonymous*, *H. T.* 11 *W.* 3. 2 *Salk.* 486. — An order of Sessions drawn up specially, in order to have the opinion of the Court, was concluded, "and if the Court should be of opinion, then," &c. — This was held naught; for the justices ought to determine one way or other, and not make a special conclusion, referring to the Court; but it was referred to the judge of assize.

A special case cannot refer the matter to the consideration of the Court.

985. *South Cadbury* v. *Braddon*, *M. T.* 9 *Ann.* 2 *Salk.* 607. — On an appeal to the Sessions the Court discharged the first order; and now EARL moved to set aside the order of discharge, because the justices do not say whether they discharge it for form, or on the merits; for if it was for form, the parish is not bound; but if on the merits, the parish in consequence is hereby discharged for ever. — ET PER CURIAM. First, the justices are not bound to express the reason of their judgment in the judgment, no more than other courts; and if it was otherwise held in the late Chief Justice's time, it passed without due consideration. The reason of their judgment must be collected from the record; as where judgment is arrested upon an insufficient indictment.

The Sessions need not set forth the reason of their judgment.

986. *Rex* v. *Tedford*, *T. T.* 8 & 9 *G.* 2. *Burr. S. C.* 57. — Two justices removed *Gill*, his wife and children; and the Sessions confirmed the order: the appeal was received, and adjourned to *Michaelmas* Sessions; and a case in the mean time ordered to be made for the judge of assize, on 9 *G.* 1. *c.* 5. § 5. *viz.* — That *Gill* was settled at *T.*; and contracted with *Atkinson* for a house and curtilage in *W.* for 39*l.*, which was conveyed to *Gill* and his heirs accordingly, in consideration of 39*l.* *Gill* paid 9*l.*, and *Bristol* paid the remaining 30*l.* to *Atkinson* by *Gill*'s order. The conveyance was dated the 2d *May* 1730; but it was not executed till the 10th of *May* 1730. Upon 18th *June* 1730, *Gill* mortgaged the premises to the said *Bristol*, by demise for one thousand years, under a proviso to be void on payment of the money in a year. *Gill* continued in possession about four years after the mortgage: then *Bristol* entered by virtue of the said mortgage and a release of the equity of redemption. Then the inhabitants of *W.* procured *Gill*, being out of possession, to be removed to *T.* The order of Sessions recited that, whereas the judges of assize had not time to

The Sessions need not state the evidence upon which their judgment is founded; but if they state all the facts, the Court of King's Bench may examine the propriety of their conclusions of fraud. S. C. 2 Str. 1014. 2 Sess. Cases, 237. See Rex v. Llanwinio, *post*, pl. 996. and Rex v. Lanbedergoch, post, pl. 999.

hear and determine it; and whereas the parties agreed this case to be the true state of the case; and then it proceeds thus: — "Now upon hearing counsel and further evidence on both sides, "this Court doth declare and adjudge, that the purchase made by "*Gill* was fraudulent; and that the settlement of *Gill*, his wife "and children, was at *T.*; but the parishioners of *T.* are no way "concerned in the said fraud." — LORD HARDWICKE. The question is, Whether the fraud sufficiently appears in the present case? It was said, that the justices are the proper judges of fraud. But fraud is a fact which must be found. It must be so by a jury upon a special verdict; for, in that case it is not sufficient to find premises only, without drawing any conclusion. The justices are judges of the fact; and they may judge of the fraud arising from the facts: but we are judges of the law upon the facts, though not of the facts themselves. If they had generally found the fraud, we might have been bound by such a general finding: but when they state the facts particularly, the matter is as much open for our determination upon it, as it was for theirs. Here the facts are particularly stated: so that we can determine upon them, as well as they could. The residing four years in this house (which is one of the facts stated) is, to me, a very material circumstance in this case: and it is expressly stated, that the parishioners of the parish of *T.* were no way concerned in the fraud. It has been urged, that there might be other facts upon which the justices might adjudge the fraud; because the adjudication is said to be, upon hearing further evidence. And indeed if the words, "upon hearing further evidence," were to be taken for evidence of other new facts, we could not controul their determination; but it is much more natural to suppose the further evidence to have been of the same facts; because the facts were before agreed. The justices are only to consider concerning frauds which regard the parish (in order to gain a settlement in it). They are not to inquire concerning fraud between the parties: that would make them a court of chancery. *Bristol* is not stated to have been even a parishioner of *T.*; and the finding that the parishioners of *T.* were no way concerned in the fraud, excludes all presumption that they were so. The facts stated in this order do not, in my opinion, warrant the conclusion of the justices. — PAGE J. This case does not seem to me to be within the act of 9 *G.* 1. But, without the aid of that act, the justices have a right to inquire into the fraud. I remember a case (I was of counsel in it) of *St. Giles's* in *Cambridge*. The pauper bought a cottage there, and came hither to settle: and from thence he was removed, by an order of two justices. Upon this, the man brought an action of assault and battery for removing him. It was tried before Lord *Holt* C. J.: and it was insisted that an action would not lie, because it was a fraudulent purchase, and so no settlement. It appeared that the man was not worth a shilling, but had borrowed the whole purchase-money of a gentleman who had an estate in the town. *Holt* held, that the justices had a right to inquire into purchases of that kind; and had a right to remove, if they found them fraudulent. And the plaintiff was nonsuited. Yet there the seller was no party to the fraud. Here is no sign of fraud in the present case between the parties interested: and it is expressly stated, that the parish of *T.* was not concerned in any. Besides, it is frequent for persons to purchase without

having so much ready money as the whole purchase amounts to. Therefore this circumstance alone can be no evidence of fraud in the present case. I must take the justices to have stated all the facts. For, otherwise, it could not be the true state of the case; which it is agreed to be. Indeed if the justices had not stated the case, we could not have looked into it: but where the facts appear to us, we are to judge of the fraud. And, for my part, I do not see that this amounts to a fraud. — PROBYN J. The question is, Whether this be an order, stating a complete special case for the opinion of this Court? or, Whether what appears to us was only a part of the case, which part only they referred to the opinion of the judge of assize, reserving the consideration of the full and whole case to themselves. They say, that that case stated to the judge of assize was agreed to be the true state of the case: that is, so far as was stated to him. The judge did not meddle with it. The further consideration of it had been reserved to themselves: and when it came back, they heard further evidence on both sides. The only fraud that the justices could take notice of, was such a fraud as would affect the parish in which the settlement was to be gained by the purchase. I own, I think that as far as the case is stated there does not appear any fraud: and the rather, since the man continued four years in possession after he had mortgaged it. And it is expressly stated, that the parish of *Tedford* had no concern in any fraud. The order does not mention the consideration of the mortgage or of the release: so that we can judge nothing from thence. But my doubt is, Whether this can be considered as a complete special order fully stated for the judgment of this Court, as the Sessions only consulted the Judge of assize upon a part of the state of the case, and as the further evidence seems to go to new facts (for they had no need to hear further evidence upon facts agreed on by both sides)? If the further evidence went to new facts, then the justices were judges of the facts that appeared before them; of which we cannot inquire or determine, so as to take it out of their hands into our own. — LEE J. If this state, thus agreed to be true, be not the whole of the case, there will not indeed be a sufficient reason for quashing the order. In general, where a case is specially stated, that case is taken to contain the full reasons of the determination made by the Sessions: and therefore if the Court hold those reasons to be ill, they will quash the order of Sessions. I should rather incline to think that this state of the present case contains the whole of the case; it appears to be agreed by counsel on both sides to be the true state of the case. It was referred to the judge of assize, who did not meddle with it. When it came back to the sessions, there might be other justices present than were present at the former sessions; who might not take it on the concession of the counsel, but might desire to enter, themselves, into the examination of the matter. If this state of the case contains the whole of the facts, then the adjudication of the Sessions signifies nothing, if we are of opinion that the facts are not sufficient to warrant their conclusions: for we are to draw a conclusion from the facts when we have them fully before us. The subject of the act of parliament is only the payment of the consideration money. If there be an actual payment of 30*l.* *bonâ fide*, it is not within the act. Now here is 39*l.* *bonâ fide* paid. I cannot see that this is

a fraudulent purchase, with regard to the settlement. The constant determination has been, that when a person comes to live in a tenement of his own, though under 40*s. per annum*, free, copy, or leasehold, he is irremovable. Now this man appears to have paid 9*l.* himself, and it does not appear that the remainder was borrowed. And the man lived four years in it. It does not at all appear what was advanced to him upon the mortgage. Therefore this man was irremovable after forty days continuance at *T.*; and consequently he was settled there. The most natural meaning of the words of the order is, that this state, agreed to be the true one, contains the whole case: and if it does, then it is a bad order. — THE COURT were unanimous, that if this state of the case be taken to be the whole state of the facts, then the order is bad. — LORD HARDWICKE: It would be pretty hard to say that these words, "further evidence," (whether inserted by the clerk of the peace of course, or by order of justices) should destroy the case before stated. There is no certain form of submitting the case, by the Sessions, to the judgment of this Court; nor any occasion to do it at all. If this reference to the judge of assize was only of a part of the case, it was an impertinent reference. The Sessions might hear further evidence; and yet no further fact might appear to them: if there had, it is probable they would have stated it. — Mr. JUSTICE PROBYN: The Sessions do not always refer the whole case to the judge of assize: sometimes they refer only a particular point; and reserve the final determination of the whole matter to themselves. The Sessions might therefore hear further evidence concerning the fraud; though they could have no kind of occasion to hear further evidence to the facts agreed to be truly stated. — THE COURT took some time to consider. *And now* LORD HARDWICKE said, The question upon the merits was, *Whether* it sufficiently appeared, upon the facts stated, that this was a fraudulent settlement? We thought it did not. But then the question was, Whether the whole fact appeared to us? because the Sessions adjudge the purchase to be fraudulent, upon hearing further evidence. I own I thought the whole case was sufficiently before us: otherwise, the justices must have done a very impertinent thing in representing this to be the true state of the case. It could not be a true state of the case, if they heard further evidence to new facts. I dare say, that (if the truth was known) further evidence was only of what passed before the judge of assize to whom it had been referred. Mr. JUSTICE PAGE and Mr. JUSTICE LEE held the same opinion as before: and Mr. JUSTICE PAGE called it blowing hot and cold, unless the case stated as the true one was taken to be the whole state of the facts. Both orders were quashed.

The Sessions cannot be compelled to state a special case.

987. *Rex* v. *Oulton, M. T.* 9 *G.* 2. *Burr. S. C.* 64. — Two justices removed *Ailmer*, &c. from *W.* to *O.*; and, on appeal, the Sessions confirmed the order, but refused to state *a special case*. The counsel for *O.* excepted at the Sessions against their refusing to state the case specially, and the *exception* was returned up, together with the orders. — LORD HARDWICKE: To what purpose should we make a rule to show cause why this order of Sessions should not be quashed? for I do not see that we can ever make such a rule absolute, because this that is alleged to have been the real state of the case does not appear to us to be the fact.

And how can we take it for granted that it was the real fact? To be sure it is a thing very much to be censured and discommended, when an inferior jurisdiction endeavours to preclude the parties from an opportunity of applying to a superior jurisdiction. But still we must go according to the due course of law. — PAGE J. I never knew an instance that this Court could force the justices against their will to state a special case. — LEE J. This alleged case, supposing it to be the truth, is directly contrary to the determination of that of *St. George's, Southwark*: therefore I very much incline to come at it if I can. — THE COURT hinted to the counsel who moved to quash the order of Sessions, that they might look narrowly into the order to see if they could find any defects in form; and in that view it was at present adjourned. — The day following the counsel for quashing the order moved for a rule to shew cause why the return should not be amended, and the state of the case inserted by the clerk of the peace in the body of the order of Sessions. The Court gave him a rule to show cause. — On *Thursday* the 12th of *June* cause was shown against this method of putting the state of the case in the body of the order; and the counsel for *Wells* said, "The clerk of the peace is doubtful whether we can do it against the will of the justices at Sessions." — LORD HARDWICKE. Here is plainly a determination contrary to law. The right way would be, either that it should go back to the Sessions, or that it should be referred to a judge of assize. However, at present, a rule was made upon the clerk of the peace, and upon the parish of *Wells*, for them to show cause why the return should not be amended as above. — On the last day of *Trinity Term* 1735, 8 & 9 *Geo.* 2. the counsel for quashing the order moved to make the above rule absolute: to which the counsel for the clerk of the peace had no objection, if the Court thought that he might do it. But the rule to show cause appearing to have been before enlarged, nothing was taken by the present motion, but the rule stood enlarged to the next term. — On *Friday* the 7th of *November* 1735, the counsel for the parish of *Wells* argued, that the return is perfect and complete; it wants no amendment, nor can receive any. The justices have executed their authority; they cannot resume it again. These exceptions are only the allegations of counsel, and no part of the order. The clerk of the peace has no authority to insert this case. — LORD HARDWICKE. I do not see what it is possible for the Court to do in this case without consent. Here is no consent; so far from it, that, on the contrary, the parish concerned in interest opposes it. Here is an order of removal made by two justices; an appeal therefrom; and a general order, on that appeal for confirmation of the order of the two justices. The counsel at the Sessions except to the order of Sessions in the words of a bill of exceptions, and state the fact. If the fact be true, the ground of the exceptions is right; for it has been often holden in this court, that a child, after the death of the father, may gain a settlement under the mother as well as it might before under the father. But the exceptions set forth, that the Court of Sessions refuse to state the matter specially: How then shall we do this that is now desired of us, without their consent, even though the clerk of the peace should consent? It does not appear to us, that the fact alleged

is true; it is only the allegation of counsel; or perhaps there might be evidence given of it, and the Sessions might not believe the evidence. This is not in the form of a bill of exceptions, though it be in the words of one. If a bill of exceptions will lie (*a*), there is then a proper method to come at the right and justice of the matter. The Court have ordered amendments in point of form; but what is now prayed is an amendment in point of substance, contrary to the opinion of the Court below.—PAGE J. The consequence of this amendment would be, to bring the fact only alleged by counsel at Sessions into this Court to be determined here. I do not know that ever this Court inquires into the facts upon which justices have determined; and they themselves have stated none, but have adjudged generally. This would be to bring the facts to be examined here, which do not appear to have been admitted as the facts by the Sessions, though they are alleged by the counsel. The Sessions might not perhaps agree this to be the fact, notwithstanding the opinion and allegation of the counsel.—PRATT J. This Court can take no notice of any thing but the order. I remember a like case in the last year of the late king, where the original examinations were returned up with the order; but the Court said, they could take notice of nothing but what was contained in the body of the order. The present case is less strong; for this is only the allegation of counsel; there the original examinations were returned up hither.—LEE J. The Court were in hopes of a consent when they made this rule; but as it is opposed, instead of being consented to, there is nothing clearer than that we cannot grant this motion, which amounts, in effect, to a rule upon the Sessions to oblige them to state the facts specially; which would be going very much *out of* the way. If there be any method for that (as I have heard *it said* that there is), it must be by way of a bill of exceptions (*b*); and there is a proper writ to oblige the justices to set their seals to it, in case they refuse to do so.

(*a*) But see Rex *v.* Preston, *ante*, pl. 932. where it is decided that a bill of exceptions will not lie.

(*b*) Sed vide Rex *v.* Preston, *ante*, pl. 932.

A special case must not state the *evidence of the facts*, but *the facts* themselves.

988. *Rex* v. *Martley*, *T. T.*, 11 & 12 *G.* 2. *Burr. S. C.* 120.—This was an order of Sessions confirming an original order of two justices made for removing *S. B.*, musician, and his wife and children, from *C.* to *M.* They were all strollers and vagrants, and had been so all their lives, and had never gained any settlement any where; and the place of their births seemed very uncertain. However, the Sessions had not sufficiently stated the facts: they had stated only the evidence.—THE COURT therefore recommended it to the counsel on both sides to consent that it should go down again to be better stated. They supposed it to be the intention of the Sessions to state the facts for the opinion of this Court upon them. But this Court could not judge of the place where the paupers were born. Special orders of Sessions were considered, they said, in the nature of special verdicts, which are not to state the evidence of the fact, but the fact itself.

The fact of *fraud* must be found positively by the Sessions; the Court will not infer it. Burr. S. C. 166. 2 Sess. Cas. 189.

989. *Rex* v. *Weston*, *T. T.*, 14 *G.* 2. 2 *Str.* 1156.—Upon a special order of Sessions it was stated, that the pauper took a farm of 10*l.* *per ann.* in *K.*, which had been let at that rent for six years last past, but before only at 7*l.* *per ann.*; that he also took a bytack of 20*s.* a year in *K.*; that his family lived ten months there; that when he first took to these tenements, he was not of ability to stock them; and that being told by the former tenant that 10*l.*

per ann. was too much, he answered, he did not regard the dearness, for as it was 10*l.* a year it would gain him a settlement, and put an end to a dispute between two towns; but desired the former tenant to take no notice of this to any body. The Sessions determined this to be no settlement in *K.* — But the order, being removed, was quashed; for THE COURT said, they could not hold this to be fraudulent, it not being so adjudged, and evidence of fraud is not sufficient; and that as to the value, they must take it to be according to the rent, unless the contrary was stated; for as it is a removal of a man from his farm, it should be shown to be under value.

See Rex v. Landbeder-goch, *post*, pl. 999.

990. *Rex* v. *Bradenham, E. T.*, 29 *G.* 2. *Burr. S. C.* 394. — Two justices removed *J. S.* from *T.* to *B.*, and on appeal, the Sessions *discharged* the said order. — NARES, on behalf of the parish of *T.*, on an affidavit stating that the order was not *discharged* upon the *merits*, which were never entered into, but *quashed* for an apprehended mistake *of form*, obtained a rule to show cause why the order should not be sent back to the Sessions to be rectified, and made agreeable to the truth of the case. But on the other side an affidavit was produced, which denied that the order was quashed for want *of form*. — THE COURT held it doubtful upon the affidavits, whether it was in fact discharged upon the merits, or quashed for defect in form, and was therefore clearly and unanimously of opinion that the Court could do nothing with it.

The Court will not send a case to be rectified by the minutes of the Sessions, if the fact required to be answered be not clearly stated.

991. *Rex* v. *Hitcham, H. T.* 33 *G.* 2. *Burr. S. C.* 489. — Two justices removed *T. D.* and his family from *H.* to *R.*; and the Sessions, on appeal, vacated the order, on account of his having gained a settlement by hiring and service in *H.* — NORTON moved to quash this order of Sessions, because, as the pauper was a married man with a family, he could not gain a settlement by a hiring and service; and this letting himself is nothing more than a hiring for a year and a service for a year. Afterwards, Mr. MORTON (who was for the parish of *R.*) moved, That the order of Sessions might be sent down to be amended in the state of the facts. He produced an affidavit, "that the pauper was not, in fact, a married "man at the time of his letting himself to his brother for a year; "nor was his being a single man at that time at all contested: "but that the recital of his having a wife at that time was inserted "by a *mistake*; and that it then appeared to the Sessions, upon "the evidence, that he was then a single man." — LORD MANSFIELD. Otherwise, there is no question about the settlement, and I wondered at its being made one. — A rule was made to show cause why the order of Sessions should not be sent back in order to be amended. This rule was now made absolute, though very strenuously defended, for the Court thought it likely to be a mistake, for two reasons. One of them was an observation of *Dennison* J. "That if he was not a single man at the time "of his hiring himself, no question at all could have arisen at the "Sessions about the rest of the case." The other reason to suspect that it was a mere mistake, was added by *Foster* J. namely, "That the counsel concerned for the parish of *H.* were "so vehement in their opposition to its being stated agreeably to "the real truth of the fact." The Sessions thereupon re-examined the matter, and heard new evidence, which proved the said

The Court will send back a special case, in order that it may be amended as to a particular fact by new evidence.

T. D. to have been a single man at the time of the hiring; and they amended their order accordingly.

If a special case be sent back to be re-stated, the Sessions should proceed as if it were an entirely new business. See Rex v. Bramley, *post*, pl. 998.

992. *Rex* v. *Page*, *H. T.* 5 *G.* 3. *MSS.* — The Court ordered that an order of Sessions made for confirming an indenture of apprenticeship for binding a poor apprentice of the parish of *Ottery* in the county of *Somerset* to the defendant *Page*, be sent back to the Sessions to be re-stated, and to state particularly whether the defendant is an occupier or only a bailiff. The defendant *Page*, being a servant to Serjeant *Wynne*, to take up his tithes, had a parish-apprentice bound to him, against which he appealed; and at the hearing of the cause at the Sessions the counsel were dissatisfied with the opinion of the Court, and therefore stated the case specially for the Court of King's Bench to determine; but they stated evidence on both sides, and did not say whether *Page* was an occupier in his own right of the tithes, or whether he was a mere bailiff to Serjeant *Wynne*; upon which the case was sent down to be re-stated, and the Sessions, without hearing any evidence, stated that he was an occupier. The counsel for *Page* moved the Court, that an order might be made directing the Sessions to hear evidence, which was done accordingly in the following words: "The Court then ordered, that the order returned with "the *certiorari*, and also the last re-stated order returned hither "respecting a rule of this Court, be sent back to be re-stated, and "to state whether, and how, and in what manner, the defendant "is an occupier of the tithes, and to hear evidence as to the fact." Mr. *Peter Taylor* was the only justice who voted for hearing evidence when the case was before Sessions the last time to be re-stated; and upon making the last order the Court approved highly of his conduct, and resented in very strong terms the behaviour of the other justices, saying, that if any one would move for an information against them, the Court would certainly grant it; that they had no right to take any notice of what had passed before; that it was in the nature of a new trial; and that they ought to have proceeded as if it had been an entire new business.

But the Sessions to re-state a case, are not necessarily obliged to hear new evidence where the only defect is their not having drawn any conclusion from the facts stated. S. C. Burr. S. C. 684.

993. *Rex* v. *Bray*, *E. T.* 10 *G.* 3. *MSS.* — Two justices removed *Hunt* from *Sherfield* to *Bray*; and the Sessions, on appeal, confirmed the order, and stated a case which was sent back to be re-stated. The Sessions refused to hear any evidence; but having the order read to them, the justices said that they would draw the conclusion, and stated that the pauper was hired for a year: upon which the counsel for *Bray* moved the Court of King's Bench, that the order should be again sent back to be re-stated, and that the justices should be directed to hear evidence; a rule *nisi* was made, and upon showing cause, DUNNING and KIRBY insisted, in support of the rule, that the justices ought to have heard evidence, because it was impossible for them to state facts without it, especially when three justices who had not heard what passed at the former Sessions were present; and the refusing the evidence was highly improper in this case, because the chairman and another justice declined giving any opinion as to the manner of re-stating the case, merely because they had not heard any evidence; which fact was verified by affidavit, upon which the rule was made: that the doubt with the Court, when the order was sent back, was, Whether the man was hired on the *Monday* after *Michaelmas-day* or the Thursday before? which could not be

stated without examination; that the sending back an order of Sessions to be re-stated is like a new trial, and was so considered by the Court in the cases of *Rex* v. *Hitcham* (*a*), and *Rex* v. *Page*: (*b*) that the order re-stated imports to be the order and opinion of them who refused to give any opinion, as well as those who had expressed their opinion: that it ought to appear that their opinion was founded on evidence, the contrary whereof expressly appeared: that every member ought to be permitted to satisfy his own mind; and that the Court of King's Bench has often supposed, that one member or judge of a court might have changed the opinion of the whole Court, if he had been permitted to receive that information which he had a right to: that the order for re-stating does always imply a re-hearing, but particularly so in this case, the fact not having been ascertained by all the evidence which could settle it; and the rule was strongly pressed upon the authority of *Rex* v. *Page* and *Rex* v. *Hitcham*. — MANSFIELD, on the other side, produced an affidavit, stating, that no new evidence was offered to the Court of Quarter Sessions: that the majority of justices present were present at the former Sessions, when the evidence was gone into: and they contended, that there could be no new facts to examine any witnesses about; for the only difficulty the Court of King's Bench had when the case was first stated, was, because the justices had not drawn the conclusion from the evidence, which they, the King's Bench, could not do: and that therefore the case should be returned for the Sessions to draw the conclusion, and to do that only, and not examine the evidence again: that it would be of bad consequence if they were to be permitted to re-examine the evidence; for it would be introductive of perjury, if the party having discovered the defect of their case, was allowed to amend his cause by re-instructing or gaining a witness: that it would be particularly dangerous in the present case, for the pauper had sworn to an agreement on *Thursday* before *Michaelmas-day*, and the view of examining afresh was to make him swear to a hiring two days after *Michaelmas-day*: that it was probable he would be induced to contradict the evidence he had before given, because he had been in the possession and custody of the appellants, who could only wish to have him examined, had they imagined his evidence would differ from what he had before sworn to: that the order in *Rex* v. *Page* directed them to state in what manner he was bailiff; and that in *Rex* v. *Hitcham* the Court was of opinion, that the fact of the marriage should be tried. — LORD MANSFIELD. Here was no fresh evidence offered; and I think it would be dangerous to examine the pauper again, after he has been in the custody and under the influence of the appellants; and I therefore think the justices have done extremely right. It has been compared to a new trial. It is and it is not like a new trial. Here it is not like one; the justices had nothing to do but to draw the conclusion, which we could not do, and about which, if I had heard the evidence, I should have no doubt. Where the case is sent down for informality only, they must not hear even new evidence; but there was no such fresh evidence tendered. To what purpose should the pauper have been examined? To say that he agreed two days after *Michaelmas*, when he had sworn to the agreement the *Thursday* before *Michaelmas*, that would be dangerous. In the cases re-

(*a*) *Ante*, pl. 991.
(*b*) *Ante*, pl. 992.

See *post*, pl. 998.

ferred to, evidence was necessarily examined to clear up the doubt about the facts; but here was no doubt as to the facts, but a conclusion was necessary to be drawn from the facts, which the justices having done, the question is at an end.—The rule was discharged.

The Court will not send a case to be re-stated merely on account of the Sessions having improperly rejected hearsay evidence. S. C. Burr. S. C. 701.

994. *Rex* v. *Nutley*, *E. T.* 12 *G.* 3. *MSS.* — Two justices removed *John Merrat* from *N.* to *B.*, but the Sessions quashed the order, and stated the following case: Six weeks before *Michaelmas*, *John Page* was hired in the presence of *Thomas Merrat*, since deceased, (father of the pauper,) by *Thomas Smith* of *B.*, to serve the said *Thomas Smith* for a year, as under-carter to *Merrat*, when it was agreed, that *Page* and *Merrat* should come into the service of *Smith* on the day after *Michaelmas-day*. *Page* and *Merrat* accordingly went into the said service on the day after *Michaelmas-day*. *Page* served *Smith* during the year as under-carter to *Merrat*, and then *Page* and *Merrat* left the service, and *Page* received his year's wages. *John Merrat*, the pauper, never acquired any settlement in his own right. *Rachael*, widow of *Thomas Merrat*, deposed, that her late husband, the *Michaelmas-day* in the morning, after he left the service of *Smith*, told her he had hired himself to farmer *John Smith* of *Ilsfield*; that he had likewise told her, that he went into the service of the said *John*, in the parish of *Ilsfield*, at *Michaelmas*, in consequence of such hiring; that he continued in his service until about a month before the *Michaelmas* following, at which time, *viz.* about a month before *Michaelmas-day*, the said *Smith* turned him going; and that he was so turned away because he should not gain a settlement in the parish of *Ilsfield*; but he did not tell her that the said *John* did give that or any other reason for turning him away. The said *Rachael* further deposed, that she was married to *Thomas Merrat* at *Easter* in the year in which he told her he was in the service of the said *John Smith*, and that she twice saw him during the said year in the service of the said *John*, and during that year until his being turned so away she considered him in the service of the said *John*. So much of *Rachael Merrat*'s evidence as related to the declarations of her husband, being considered by the Court as mere hearsay, was rejected, as not being admissible evidence. It was contended, that the Court ought to send the case back to the Sessions, and direct them to hear and receive the evidence of *Rachael Merrat* as to the declarations of her husband; that such evidence ought to be admitted in a case circumstanced as the present is; and that in fact it is the constant practice of other Sessions to receive such hearsay; that the case of *Rex* v. *Greenwich* (*a*) came before the Court of King's Bench upon hearsay evidence only; that the Court sent it back to the Sessions for the single purpose of stating whether the pauper did in fact reside forty days at *Greenwich*, the order having stated only that he might have resided there forty days; that the Court would not have sent it to the Sessions if they had not thought hearsay evidence admissible, that being the only evidence which could be had in the cause. — LORD MANSFIELD said he was satisfied that a clear hiring was proved, and that though the evidence rejected ought to have been received, yet it would only produce more litigation and expence to send the case back; and must have the same effect; he said he thought the order ought to be quashed. — Mr. ASTON was clearly of the same opinion, and that to be sure

(*a*) *Ante*, pl. 398.

the evidence of the woman ought to have been admitted, but standing alone ought to be taken as inconclusive, especially as the apprehension of the servant, as to the reason of his being turned away, did not appear to be well founded: that if the case was to be sent to the Sessions for them to receive the evidence, and not conclude upon it as evidence of the hiring and service at *Ilyfield*, which he thought they should not do, it would be productive of expence without any advantage, and he thought, therefore, the Sessions' order should be quashed; and the Sessions' order was quashed.

The Court will not order a case to be re-stated on the affidavit of a person that the clerk of the peace did not state his evidence truly. See Thackham *v.* Findon, *ante*, pl. 911.

995. *Rex* v. *Burgh*, *H. T.* 13 *G.* 3. *MSS.* — SERJEANT HILL moved, that a Sessions' case might be sent down to be re-stated upon the affidavit of one *J.*, who paid to the parish-rates, and who was examined at the time that the clerk of the peace was directed to state the case according to the evidence, and that he had neglected to state the evidence of the witness *J.*: he admitted that he could not support the order of Sessions as it was stated, and therefore objected to the manner of stating it. — MANSFIELD objected, that *J.*'s affidavit was not to be received by the Court, because he was interested by paying the parish-rates, and the Sessions ought not to have admitted him as a witness; — but HILL insisted that he was made a competent witness by being suffered to be examined; that the bare examining of a witness was a waiving of any objection. — LORD MANSFIELD being absent, ASTON J. said, We cannot admit an affidavit against the case as returned by the justices; besides, the propriety and truth of the case are only attacked by an interested person. It is immaterial when the evidence is objected to, if the objection appear during the trial. — It was in the present case taken during the trial. — WILLES and ASHHURST Js. of the same opinion — The rule for sending the case to the Sessions to be re-stated was discharged.

The facts found by the Sessions in stating a special case, are conclusive.

996. *Rex* v. *Llanwinio*, *M. T.* 32 *G.* 3. 4 *T. R.* 473. — The case, after stating that the pauper was originally settled in *L.*, stated the evidence relating to a subsequent settlement in *H.*, by taking two several tenements of the supposed yearly value of 3*l.* 10*s.* and 6*l.* 12*s.* 6*d.*, concluding with an adjudication by the Sessions, "that it was a fraudulent taking, and that it did not amount in the "whole to 10*l.* a-year;" but the Sessions referred the question, Whether the pauper gained a settlement by taking the two tenements notwithstanding the fraud, the parish of *L.* not being privy to the fraud, and there being contradictory evidence as to the value, and which evidence was set forth in the case? It was contended that the conclusion drawn by the justices was merely a matter of form, in order to raise the question in the Court of King's Bench; for that they had expressly referred the consideration of it to the Court. — LORD KENYON: Though the case is very inaccurately stated, the conclusion drawn by the justices is decisive; for they expressly state, "That it was a fraudulent taking, "and that it did not amount in the whole to 10*l.* a-year."

If in a special case, the Sessions state *evidence* instead of *facts*, the Court of King's Bench will send

997. *Rex* v. *Rainham*, *E. T.* 33 *G.* 3. 5 *T. R.* 240. — Two justices removed *J. K.*, *S.* his wife, and their five children by name, from *R.* to *G.* The Sessions on appeal quashed the order, and stated the following case: — *J. K.*, being legally settled in *G.*, rented a house in *R.* of the value of 3*l.* 19*s.* a-year, where he lived. On the 25th *May* 1792, an assessment for the land

it back to be re-stated. See also Rex v. St. Peter Mancroft, *ante.* pl. 466.

tax was made for the parish of *R.* in the following form [after the title]:

Names of Proprietors.	Names of Occupiers.	Sums assessed.		
		l.	*s.*	*d.*
Miss *Lane* and Co.	*John Kemsley.*	2	0	8

The pauper paid the rate, and took a receipt in the following form:

Mr. Tenant,
Rainham, 18th *October* 1792.
Received of *John Kemsley* the sum of, &c. "*so much being assessed and charged on him as landlord,*" &c.

The receipt was a printed form with blanks. The words "on "*him as landlord*" were printed; the pauper's name written. The receipt was signed by one of the two assessors. The tenant wished the landlord to repay him the tax, but the landlord would not. There was also a similar case stated, concerning the removal of another pauper of the name of *H.*; except that no receipt was there taken by the tenant. And it was further stated that the pauper had paid the rate to the collector, who was one of the churchwardens of *R.* At that time he had no receipt. He had agreed with his landlord to pay the land tax. He paid it in the same way for near three years. — LORD KENYON C. J. said, I think that this case ought to be sent down to the Sessions again in order that they may find the fact, whether the landlord or tenant was rated. The objection to the present statement of the case by the justices is, that they have only stated the evidence of that fact, and not the fact itself. It is much more convenient that they should always find the fact, whether the landlord or the tenant was the person intended to be rated: it is more properly within their province than ours. Perhaps if it were *res integra*, the case of *Rex* v. *Oakhampton* (*a*), and other cases of the same sort, ought to have been determined the other way: that rule however is now too well settled to be shaken. But I rather think that the statute of *William* (*b*) was only meant to extend to parochial taxes, such as poor's rates, highways, &c.; the rating to and payment of which was alone intended by the legislature to confer a settlement. — BULLER J. What my Lord has said as to the finding of the justices is certainly right, and will prevent much unnecessary litigation; they are the best judges of the fact. And as this sort of question is likely in future to be confined to that *forum*, I wish the magistrates to take this as a general rule to guide their discretion; that where the occupier's name is upon the rate at all, they should take it that he was intended to be rated, unless the contrary expressly appear; for though as between the occupier and the landlord the land tax is the landlord's tax, yet as between the public and the occupier, it is the occupier's tax. — The two cases were sent back to the Sessions in order that the justices might find the fact, whether the landlord or tenant was rated.

(*a*) Burr. S. C. 5.

(*b*) 3 & 4 Will. & Mary, c. 11. § 6.

If a case is sent back on account of admissible evidence having been rejected, the Sessions are to consider it

998. *Rex* v. *Bramley*, *T. T.* 35 *G.* 3. 6 *T. R.* 330. — Two justices by an order removed *S. W.* widow of *J. W.* deceased, and her three children, from *L.* to *B.*; and against this order the latter parish appealed to the *P.* Sessions. On the hearing of the appeal the respondents produced evidence of the settlement of *J. W.* being at B.; and in order to prove his marriage with *S. W.*,

they produced witnesses who proved that they had cohabited and lived together as man and wife, and were reputed to be man and wife until the death of *J. W.* The appellants offered to produce *S. W.* as a witness, to prove that she never was married, or that if she ever was, the ceremony took place in *I.* under such circumstances as (the appellants contended) by the laws of *I.* rendered it wholly void. The appellants also offered witnesses to prove declarations made both by *J. W.* and *S. W.* at different times that they never were married. The respondents' counsel insisted that the evidence offered by the appellants was inadmissible; and the Court being of that opinion rejected the same and confirmed the order of the justices, subject to the opinion of this Court, whether the evidence offered by the appellants was admissible or not. — THE COURT was of opinion that the evidence was admissible, though the justices were to judge of the effect of it. — HEYWOOD J. then wished that the Court of Sessions, on rehearing the case, might be confined to the examination of the supposed wife, and of the witnesses who were to speak to the declarations, &c. without putting the respondents again to the expence of proving their case. — LORD KENYON C. J. The whole case must be gone into again at the Quarter Sessions. I remember a case here some years ago where, when the same objection was made, Lord *Mansfield* said that it was like granting a new trial, in which case the whole case must be proved. — And the Court sent the case back to the Sessions.

like a *new trial*, and to rehear the whole evidence.

See *ante*, pl. 993.

999. *Rex* v. *Llanbedergoch*, *H. T.* 37 *G.* 3. 7 *T. R.* 105. — The Sessions stated the following case: The pauper was tenant of a tenement in the parish of *L.* called *Peurkyw*, under *W. G.* for the year 1795. At *May* 1795 he received notice to quit *Peurkyw* at the *All Saints* following. The pauper said he had no place to go to, and if compelled to quit, he would take down a barn he had built upon the farm, and cut the gorse that grew on the hedges. *G.* then said, Supposing we exchange, you shall go to *W. E.*, a tenement in the parish of *L.* that *G.* then occupied under *Pritchard* at the yearly rent of 10*l.* 10*s.* To which the pauper agreed, and promised not to take down the barn at *Peurkyw*. It was then agreed between them, that they were not to mention to any person that the pauper was to go to *W. E.*, lest the respondents should hear of it, and prevent the pauper getting into possession of *W. E.* The pauper was apprehensive that they would not consent to his coming to their parish, he being a man of bad character. On the 16th of *November* 1795 the pauper and his family removed from *Peurkyw* to *W. E.* He did not remove his furniture there, lest the respondents should see him, he having been informed that if he could get into possession of a tenement of 10*l.* a-year, and sleep in the house for one night, he could not be turned out of possession. *G.* would not have let the pauper into possession of *W. E.* but for the purpose of inducing him to quit *Peurkyw* and to prevent his taking down the barn; yet he thought him a responsible person. The parishioners of *Pentraeth* were not privy to the transaction. The pauper resided 29 days on the premises, when *Pritchard* aided by some of the parishioners of *L.*, the overseers of the poor of the parish of *L.* being then with them, *forcibly* removed him and his family from the tenement called *W. E.*, and thereby prevented him from residing in the

The Court of King's Bench will not infer fraud from the circumstances stated in a special case; it is a fact that must be expressly found by the Sessions. Rex v. Tamworth, Burr. S. C. 774. Bedworth v. Fillongley, *ante*, pl. 174.

tenement for the term of one year, or for 40 days, part thereof, whereby a legal settlement might have been gained; and he has ever since been forcibly kept out of the possession of the tenement. The pauper did not do any other act to gain a settlement in *L.* He was afterwards taken up at *Pentraeth*, and sent under a vagrant's pass to the parish of *L.* The pauper's place of legal settlement prior to his taking the tenement called *W. E.* was in the parish of *Pentraeth*. It was contended that it was stated as a fact, that the parish-officers used *force* to prevent the pauper gaining a settlement in *L.*; that force implied *fraud*; and that when the facts constituting the fraud were stated, it was not necessary that fraud should be found in express terms. — LORD KENYON C. J. said, that where a case is pregnant with circumstances of fraud the Court could not infer it; for that fraud is a fact which must be expressly stated.

See Rex v. Preston, *ante*, pl. 932.

VII. *The Superintendency of the King's Bench.*

The Court of King's Bench will not quash an order of Sessions, except for error in form.

1000. *Anonymous*, *E. T.* 29 *Car* 2. 1 *Vent.* 310. — It was moved for the setting aside an order of Sessions for the settling a poor person in a town, who had been sent thither by a warrant of two justices, and confirmed upon appeal to the Sessions. — But THE COURT would hear nothing of the *merits* of the cause; the order of Sessions being in such case *final*, unless there were an error in the form.

The Court of King's Bench will not reverse an order of Sessions, unless it affirm a bad order.

1001. *South Cadbury* v. *Braddon*, *M. T.* 9 *Ann.* 2 *Salk.* 607. — If the Sessions reverse the first order, and that being removed appears to be good, this Court must intend it was reversed on the merits, and affirm the order of Sessions. If the Sessions reverse the first order, and that being removed appears not to be good, we must intend it was reversed for form, and affirm the order of reversal. So, if the Sessions affirm the first order, and that appears to be good, we must affirm the order of Sessions. But if the first order appears bad, and the Sessions affirm it, this Court must reverse it, because it appears naught.

If a Sessions be adjourned pending the settlement of a special case, the Court will grant a *mandamus* commanding the Sessions to complete the case.
See also Rex v. Justices of Westmorland, *ante*, pl. 983.

1002. *Rex* v. *Justices of Sussex*, *M. T.* 9 *G.* 3. *MSS.* — An appeal against an order of removal was regularly lodged at the *Michaelmas* Sessions 1767 at *Petworth*, and the justices upon hearing the cause conceiving a doubt, ordered a special case to be made for the opinion of the Court of King's Bench. The counsel withdrew in order to settle the case, but before they had come to any agreement, the Sessions was inadvertently adjourned, and this cause was neither retained nor ended. Upon these facts an application was made to the Court of King's Bench for a *mandamus* to compel the justices to proceed in the appeal. — By THE COURT: When the justices entertain a doubt, they may without the consent of the parties order a special case to be made. When the justices say, as they did here, that a special case shall be made, they virtually say that the cause shall be adjourned over till a case is made; and therefore the want of an adjournment or a respite is merely the omission of the clerk, and may at any time be supplied. Let a *mandamus* go immediately, unless the respondents will consent to a case.

The Court of *King's Bench*

1003. *Rex* v. *Margam*, *E. T.* 27 *G.* 3. 1 *T. R.* 775. — Two justices removed a pauper from *L.* to *M.*, on which they adjudged

him to be settled in *M.* by virtue of a certificate under the hands and seals of *L. Ruff*, churchwarden, and *H. T.* overseer of *M.*, and *A. P.* and *S. W.*, justices of the peace, and attested by two witnesses. The parish of *M.* appealed to the next Sessions at *G.*, where the order was affirmed on hearing the merits. These orders being removed here by *certiorari*, this Court in *Hilary* 1786 directed the Sessions to state the number of overseers and churchwardens of *M.* at the time of granting the certificate. In answer to this rule the Court of Sessions represented to the Court of King's Bench, that they could not state the same without proceeding to examine witnesses on both sides, which they did not conceive themselves authorized to do without the further directions of the Court of King's Bench. In *Hilary Term* 1787 the Court of King's Bench ordered the Court of Sessions to examine into and certify the number of churchwardens and overseers of the poor at the time of giving the certificate in 1741; and to examine and hear such evidence as should be produced by the parties to those facts. To this rule the justices returned, that at the time of giving the certificate there were two overseers and four churchwardens in *M.* (*a*)

may order the Sessions to inquire into a fact which appears doubtful on the original order of removal, even though the Sessions stated no case for the opinion of the Court.

See Rex *v.* Bramley, *ante*, pl. 998.

1004. *Rex* v. *Yarpole*, *T. T.* 31 *G.* 3. 4 *T. R.* 71. — The Sessions on appeal confirmed an order of two justices removing a pauper from *L.* to *Y.* The orders having been removed here by *certiorari*, a rule was obtained on a former day to show cause why the original order of two justices, and also the order of Sessions confirming it, should not be quashed. — BEARCROFT now admitted that the order of Sessions could not be supported; on which ERSKINE desired that the rule might be made absolute. — But LORD KENYON C. J. said, that could not be done, as no judgment for quashing the original order was entered on the rolls of the Sessions. If the Court of Sessions had quashed, instead of confirming, the original order, there could have been no difficulty now. But the parties cannot come here *per saltum*; and as no judgment for quashing the order of justices was given at the Sessions, we, as a Court of error, cannot do what the Court below should have done. We must make that part of the rule absolute which has for its object the quashing of the order of Sessions, and direct the justices below to enter a continuance to the next Sessions (which appears to be necessary from a case in 2 *Strange*) (*b*), when they may decide it. — And the Court ordered this accordingly.

If the Sessions *confirm* an order of two justices, the Court of King's Bench will not *quash* it; but will quash the order of Sessions, and direct the Sessions to notice the order of two justices. See Cadbury *v.* Braddon, *ante*, pl. 1001.

1005. *Rex* v. *Moor Critchell*, *H. T.* 42 *G.* 3. 2 *East*, 222. — In consequence of the opinion of the Court, expressed in this case in the last term (*c*), the following special order was made: "Upon "hearing counsel on both sides, it is ordered, that an original "order of two justices for the removal of *D. S.*, &c. from the "parish of *D. St. M.*, in the county of *W.*, to the parish of *M. C.*, "in the county of *D.*, and also an order of Sessions made in con- "firmation thereof, be severally quashed for the insufficiency

If an order of removal be confirmed at the Sessions, and both orders be afterwards removed into B. R. by certiorari on a case reserved, and

(*a*) But the Court will not send a case down to the Sessions to be restated on a mere formal objection, if enough appears to enable them to decide according to the merits of the case. See Rex *v.* Middlezoy, *ante*, pl. 602.

(*b*) Quære, if the case of Rex *v.* Polsted was the case alluded to? 2 Str. 1263. *Ante*, pl. 980.

(*c*) *Ante*, pl. 790.

this Court disapprove of the orders, for want of jurisdiction of the removing magistrates appearing on the face of the original order; this Court will quash both the orders, without remitting the matter back to the Sessions to quash the original order, for the purpose of enabling them to give maintenance according to stat. 9 G. 1. c. 7. § 9. and at any rate they will not admit an application for amending their judgment for quashing both orders made in the term subsequent to the judgment so pronounced.

"thereof: it not appearing on the face of the said original order, "that the said justices, at the time of making the same, were "justices of the peace for the said county of *W.*" — GIBBS now moved (*a*) "that the above rule might be altered, by omitting "such part thereof as relates to quashing the original order of "the two justices, and that the same may only order that the "order of Sessions made in confirmation of the original order "of the two justices be quashed; and that the justices below "may be ordered to enter a continuance to the next Ses-"sions." The object of this rule was, he said, to enable the appellant parish to apply to the Sessions for the expence of maintenance, which by the stat. 9 *G.* 1. *c.* 7. § 9. could only be allowed by the Sessions on appeal, and an adjudication by them that the pauper was unduly removed; which judgment would now be obtained as their former erroneous opinion had been corrected by the decision of this Court. And he referred to *Rex* v. *Yarpole* (*b*), where an order of removal having been confirmed by the Sessions on appeal; and this Court having afterwards determined (on a question reserved for their opinion) that so many of the justices below as concurred in that judgment were disabled to vote on the particular question by reason of having an interest in one of the parishes concerned, so as to reduce the number to a minority in respect to those who voted for quashing the order; yet this Court would not quash the original order, but referred the case back to the Sessions; directing them to enter a continuance to the next Sessions in order that they might make the order for quashing, &c. which ought to have been made at first. — BURROUGH and CASBERD showed cause in the first instance; and said, that the direction given in the case cited was not warranted by the general practice of the Crown-office, and had not been followed up by the directions of the Court in subsequent cases. That it was contrary to what was done in *Road* v. *North Bradley* (*c*); where this Court exercised a jurisdiction not only over the judgment of the Sessions, but also by quashing an antecedent order of justices, being properly quashable on appeal. They also referred to various subsequent cases (*d*) where the form of the judgment was at variance with *Rex* v. *Yarpole*. And contended further, that the common practice was right on principle; for when all the orders were brought before the Court by *certiorari*, its jurisdiction attached upon them so as to deal with them as justice required. That at any rate this case was distinguishable from *Rex* v. *Yarpole*; for here the objection made went to the merits of the original order itself, to which the attention of the Court was called, as well as to the order of Sessions; whereas there the objection went only to the order of Sessions. But however incorrect the judgment of this Court had been, it was now too late to revise it upon motion; being a judgment of a term passed, and not now impeached on the ground of any clerical mistake, but for error in judgment. — GROSE J. Both orders were regularly before the Court in the last term. We then did what we thought right with them, and pro-

(*a*) Notice of the intended motion was previously given to the attorney for the parish of Donhead.

(*b*) *Ante*, pl. 1004.

(*c*) *Ante*, pl. 944.

(*d*) Rex *v.* Birdbrooke, *ante*, pl. 850. Rex *v.* Hinckley, *ante*, pl. 593. Rex *v.* Darlington, *ante*, pl. 742. Rex *v.* Aldborough, &c. *ante*, pl. 178. 329. 678. 707. 829. 832. and 2 East, 25.

nounced our judgment; and it is too much to apply now to rescind it.—PER CURIAM: Rule refused.

1006. *Rex* v. *Justices of Leicestershire, E. T. 53 G. 3.* 1 *M. & S.* 442. — An appeal against a removal from *M.* to *B.*, was heard at the Quarter Sessions, and the chairman pronounced the judgment of the Court for confirming the order; but one of the justices who made the order being present, inquired whether he was not one of the justices making the order, and being answered in the affirmative, observed that it being contrary to a rule of that Court, for justices who had made orders of removal to vote on the hearing of any appeal thereon, his vote in this case must consequently be withdrawn, and therefore judgment must be for quashing instead of confirming the order, as by taking away his vote the majority would be against confirming, and for quashing the same. The clerk of the peace thereupon entered the judgment of the Court for quashing, without perceiving at the time, that by withdrawing the vote of the said justice, the votes of the remaining justices would be equal; whereupon, by the rules of the Court, an adjournment of the appeal should have been entered, instead of a judgment to quash the order. Afterwards application was made to the chairman to rectify the judgment, but without effect. Under these circumstances a rule nisi was obtained in the last term, for a mandamus to the justices to enter continuances on the said appeal to the next General Quarter Sessions, and then to hear and determine the same. The cases of *Bodmin* v. *Warligen* (*a*), and *Rex* v. *Justices of Westmorland* (*b*), were cited. — LORD ELLENBOROUGH C. J. I cannot say what might have been my first impression upon an *ex parte* statement, made at the time when the rule was moved for; but it is my duty now, after having heard both sides, to give judgment on more mature consideration. If any error was made in the entry of the clerk of the peace, that error should have been pointed out at the Sessions, while the Court was sitting, and competent to reform its own errors, and to draw out a more correct judgment. If this application were entertained, the consequence would be, that this Court would have on all occasions to look, not to the record alone, but to extraneous matters, in order to see how the judgment of the justices at Sessions was obtained. The Court will not do this; nor, when judgment has been finally pronounced, will they hold a sort of balloting-box to ascertain the votes that were given, or whether they were correctly cast up. If no judgment had been pronounced, the Court might have interposed; but here there is a judgment. The party who would have corrected the error should have applied to the proper forum, and in due time; and if it had been found that the numbers were equal, nothing would have been done upon it, for it would have been a nullity; but here no step of that sort was taken, but judgment was entered; and this Court cannot, in order to supply a remedy, exercise a jurisdiction which does not belong to them. If they did in this instance, they must in all others, instead of looking to the result, look to the poll on which the judgment is founded. — LE BLANC J. It appears by the affidavits on both sides, that judgment was entered for quashing the order of justices; and that this was known to the attornies on both sides; and no application was made to the Court below, while sitting, to sift or inquire into the error, if any such existed. But

The Court will not grant a mandamus to the justices at Sessions, to hear an appeal against an order of removal, (after judgment given by them, and entered by the clerk of the peace for quashing the order) upon the ground that the justices at Sessions were divided in opinion, and that the judgment was entered by mistake instead of an adjournment of the appeal.

The justices at Sessions may alter their judgment, during the continuance of the Sessions.

(*a*) *Ante*, pl. 982.

(*b*) *Ante*, pl. 983.

application is made to this Court, to institute an inquiry upon the question, how the numbers were composed when judgment was pronounced. This Court ought not to countenance such an application: inasmuch as the error should have been noticed at the time. — BAYLEY J. Except in matters of a criminal nature we cannot look *dehors* the record. This Court cannot sit as upon a scrutiny before an election committee. In *Bodmin* v. *Warligen*, the objection appeared upon the entry of record, made by the clerk of the peace. — Rule discharged.

The 41 G. 3. c. 23. § 1. does not give the Court of K. B. the power of amending a poor rate.

1007. *Rex* v. *Milton*, *M. T.* 60 *G.* 3. 3 *B.* & *A.* 112. — For the particulars of this case, see *ante*, vol. i. pl. 107.

The Court of K. B. has no jurisdiction to review the judgment of the Quarter Sessions, except on a case sent up for their consideration; and therefore, where the Sessions, having heard the witnesses on one side, had refused to hear those on the other side in an appeal, on the ground that their testimony had been prefaced by observations on the part of the advocate contrary to their usual practice, the Court refused to grant a mandamus to re-hear the appeal.

1008. *Rex* v. *Justices of the County of Carnarvon*, *M. T.* 1 *G.* 4. 4 *B.* & *A.* 86. — D'OYLY Serjeant moved for a rule nisi for a mandamus, to be directed to the justices of *C.*, commanding them to enter continuances, and re-hear an appeal between two parishes, touching the settlement of a pauper. It appeared from the affidavits, that the appeal came on at the Sessions on the 14th of *July* last, and that the appellants having admitted a *prima facie* settlement in this parish, relied upon the proof of a case of a subsequently acquired settlement elsewhere. Having finished their case, the attorney for the respondents proceeded to make observations upon the case proved by the appellants, and then offered to call witnesses to contradict it; but the Sessions refused to allow those witnesses to be called, on the ground that he had rested his case on his argument as to the insufficiency of the case proved on the other side; and thereupon they quashed the order of removal. The affidavits further stated, that the course pursued by the attorney for the respondents was the usual and ordinary practice of the Sessions. D'OYLY, in support of the motion, contended, that the refusal on the part of the Sessions to hear the witnesses was in fact a refusal to hear the appeal altogether, in which case it was every day's practice for this Court to direct the Sessions by mandamus to hear and decide the question. — BAYLEY J. There is no instance, I believe, which can be found, where this Court have interfered by mandamus to direct the justices to re-hear an appeal which they have once already heard. In this case they entered into the consideration of this appeal; and, after having heard it, they have decided that the respondents ought not to be allowed to call witnesses in reply. It is possible that in that decision they may have been wrong; but it seems to me that we are not at liberty to enter into that question, as no case has been sent up for our consideration. If we were to do so, we should constitute this Court a Court of appeal from the Quarter Sessions, and we should have applications continually made to us to overturn their determinations, on the ground of the improper reception or rejection of evidence, and be called upon to review their judgment, although no case has been sent to us for that purpose. It is the duty of Sessions to hear and decide; and, if they entertain any doubts, to submit them to this Court; but where they do not desire our interference, we have no jurisdiction. — HOLROYD J. If it had appeared in this case that the Sessions had heard one side, and had altogether refused to hear the other, I should have thought it the same as if the case had not been heard

at all, and I should then have been of opinion that this mandamus ought to issue; but, in this case, it appears to me that this was merely a question as to the practice of the Sessions, who have determined that the evidence tendered ought not to have been introduced with observations on the part of the advocate. I think, therefore, that this Court has no jurisdiction to interfere in such a case. — BEST J. concurred. — Rule refused.

The Court of K. B. have no jurisdiction to grant a mandamus to magistrates to make an order of maintenance on a particular parish.

1009. *Rex* v. *Justices of Middlesex*, *H. T.* 1 & 2 *G.* 4. 4 *B.* & *A.* 298. — *Bolland*, in last *Michaelmas* term, obtained a rule *nisi* for a writ of *mandamus*, to *R. B.* and *J. M.*, Esquires, two of the justices of the peace for the county of *Middlesex*, commanding them to make an order on the churchwardens and overseers of the poor of the parish of *Christ Church*, for the relief of a bastard child, residing in the parish of *St. S.*, in the city of *London*. It appeared, by the affidavits, that *Alice Ramsey*, a single woman, being resident in the parish of *Christ Church*, became pregnant with a bastard child, and that, on the 4th *August* 1820, she was, by an order under the hands and seals of two justices, directed to be removed to the parish of *B.*, as the place of her last legal settlement. On the same day, however, in consequence of her advanced state of pregnancy, the execution of the order was suspended, and she was delivered of the bastard child in question, in the parish of *Christ Church*, on the 5th *August*. The order was never served on the parish of *B.*, nor was the pauper ever removed thither; but on the 14th *September*, she was, at the instance of the parish-officers of *Christ Church*, who bought the ring and paid the marriage fees, married to *Thomas Ramsey*, the putative father of the child. No order of bastardy was ever obtained against *Thomas Ramsey*, who was a settled inhabitant of the parish of *St. S.*, and with his wife and the child, chargeable to that parish.—ABBOTT C. J. now delivered the opinion of the Court. We have considered this question, and we are all of opinion, that this Court ought not to grant a *mandamus* in the present case. It is the ordinary practice of the Court to grant this writ, to compel magistrates to hear and determine a case in which they have a jurisdiction to hear, but have refused altogether to exercise it: but there is not an instance which can be cited, where the Court have granted a *mandamus* to justices to compel them to come to any particular decision, which would be the case if we were, upon the present occasion, to order them to make an order of maintenance upon the parish of *C. C.* We had at one time thought that it might be desirable to give our opinion as to the merits of this case, for the guidance of the magistrates; but, upon reconsidering the matter, we think that we ought not to give an extra-judicial opinion upon the case. Upon the ground, therefore, that we think the Court have no power to grant a *mandamus* to the magistrates, to compel them to make such an order of maintenance, we are all of opinion that this rule ought to be discharged. — Rule discharged.

Upon an appeal against an order of removal, the justices at Sessions were equally divided in opinion upon a

1010. *Rex* v. *Monmouthshire*, *Js. M. T.* 6 *G.* 4. 4 *B* & *C.* 844.— By an order of two justices *J. W.* was removed from *A.* to *S. J.*, the latter parish appealed, and the appeal was heard at the *Michaelmas* Sessions 1824. Upon the hearing the Sessions quashed the order. A rule *nisi* for a *mandamus* had been obtained on an affidavit, stating that the justices at Sessions were equally divided in opinion on the case, and that thereupon the counsel for the ap-

question of fact on which the settlement of the pauper depended. The Sessions thinking that it lay on the respondent parish to establish their case to the satisfaction of a majority of the Court, quashed the order of removal. The Sessions having decided the case, this Court refused a *mandamus*. Query, If the Sessions ought to have adjourned instead of quashing the order.

pellants had contended that they were bound to adjourn the appeal; but the Sessions refused to do so, and quashed the order. In answer to this there was an affidavit stating that upon the hearing of the appeal the counsel for the appellants had insisted on two points, one of which was, that the respondents had failed in proving that the pauper had resided 40 days in the appellant parish, and that the chairman after the hearing had said, that it might be convenient to take the opinion of the justices on the points separately, because if the residence were not proved it would be unnecessary to decide the other question, inasmuch as the respondents must then at all events fail, that upon the question, whether the 40 days' residence were proved, the justices were equally divided, and having then taken into consideration what judgment they ought to give, they determined, without any division to quash the order. — ABBOTT C. J. I think that the rule for a *mandamus* ought to be discharged. It appears that in this case the Court of Quarter Sessions have given their judgment. This Court is not a Court of Error from that Court; it may compel the Court of Quarter Sessions by *mandamus* to proceed to hear and decide the appeal, but when they have so determined it, this Court cannot compel them to correct their judgment if it appear to be erroneous. It is unnecessary to say whether the judgment pronounced by the Court of Quarter Sessions was erroneous or not, because we are of opinion, that even if it were so we have no jurisdiction to compel them to correct it. — Rule discharged.

VIII. *Of Costs and Charges.*

The allowance of *costs* upon an appeal from an order of removal is in the discretion of the Sessions.

1011. *Rex* v. *Justices of Nottingham*, 5 G. 1. *MSS.* — A *mandamus* was directed to the justices to give costs to the party in whose favour the appeal had been determined. But upon the return, THE COURT held it reasonable for them to have the power of judging whether costs should be allowed or not, and quashed the writ of *mandamus*.

The Court will grant a *mandamus* to the Sessions, commanding them to allow *costs* and *charges*.

1012. *St. Mary's Nottingham* v. *Kirklington*, *E. T.* 3 G. 3. 2 *Sess. Cas.* 67. — It was moved for a *mandamus* to be directed to the justices of peace of the town and county of *Nottingham*, commanding them to allow the parish of *K.* the expence and charges their officers had been put to, in keeping a poor person from the time of his removal to the parish of *K.* till the time that the order of removal was discharged by the Sessions, upon the appeal of the parish of *K.* from it. — THE COURT: This is what is ordered by the statute 9 G. 1. *c.* 7. § 9., and has been allowed in the case of *Rex* v. *Boston*. (*a*) — A *mandamus* was granted.

(*a*) *Ante*, pl. 709. The Sessions in ordering *costs* need not say that so much was expended.

1013. *Maidenbradley* v. *Wallingford*, *E. T.* 12 G. 2. *Foley*, 247. — HUSSEY took an exception to an order of Sessions made for costs upon the statute of 9 G. 1. *c.* 7., because it ordered so much for costs, without saying that so much was expended or laid out. — CURIA: It appears by the oath of the parties, that so much was laid out.

The Sessions cannot order costs on the mere adjournment of an appeal.

1014. *Rex* v. *Stansfield*, *E. T.* 16 G. 2. *Burr. S. C.* 205. — The Sessions adjourned the appeal to the next Quarter Sessions, and ordered four guineas costs to the appellants; which order was quashed as to the costs; for the Sessions cannot give costs on a mere adjournment of the appeal, without hearing it.

1015. *Rex* v. *Great Chart, M. T.* 16 *G.* 2. *Burr. S. C.* 194. — An order of Sessions quashing an insufficient order of justices for the removal of a pauper from the parish of *G. C.* to the parish of *K.*, concluded thus: "It is further ordered by this Court, that "the costs of maintenance of the said *S. M.* since the time of "the removal to the said parish of *K.*, shall abide the event of the "cause; in case the said parish of *G. C.* shall think proper by "another order to remove the said *S. M.* to the said parish of "*K.*, and the inhabitants of *K.* appeal to this Court from the "same."— BY THE COURT: Let that part of the order which directs the costs of maintaining the pauper to attend the event of the cause be quashed.

The Sessions cannot direct *the costs* to attend the event of another presumed appeal.

1016. *Rex* v. *Edgeworth, H. T.* 31 *G.* 3. 4 *T. R.* 218. — When this settlement case was argued in *H. T.*, 29 *G.* 3. the Court not being satisfied as to one fact, sent it down to the Sessions to be re-stated. The Sessions accordingly stated that fact, and returned the case here, when the order of Sessions was confirmed, THE COURT thinking that the additional fact stated by the Sessions was decisive. A motion was made in this Term on the part of the parish of *E.* to discharge their recognizance to pay costs (*a*), on the ground that their objection to the order of Sessions, as it was originally stated, was well founded; and that consequently the other parish would not have been entitled to the costs, if the Court had given judgment on that case. And the cases of *Rex* v. *Hitcham* (*b*), and *Rex* v. *Bray* (*c*), where the same rule had been granted, were relied on. — But THE COURT said, that in those cases the parties suing out the *certiorari* were not held liable for the costs, because when the errors were corrected they abandoned the prosecution. But that in the present case the parish of *E.* had not abandoned the pursuit, after the case was re-stated, but had taken the chance of the judgment of the Court being given in their favour, when it came here a second time; and therefore they ought to pay the costs.

If a Sessions' case be sent down to be re-stated, and the prosecutor abandon it, this Court will discharge his recognizance for the costs; but if he dispute the *amended order*, they will not.

(*a*) Given under 5 G. 2. c. 19. § 2.

(*b*) *Ante*, pl. 991.

(*c*) *Ante*, pl. 998.

1017. *Rex* v. *Justices of Essex, E. T.* 40 *G.* 3. 8 *T. R.* 583. — The Reverend *J. R. Holder*, having given notice of his intention to appeal to the Quarter Sessions in *E.* against a rate made for the relief of the poor of the parish of *U.*, on the day before the Sessions countermanded his notice; whereupon the parish-officers of *U.* applied to the Sessions for the costs to which they had been put in preparing to resist the appeal, under the stat. 17 *G.* 2. *c.* 38. § 4. But the Court of Quarter Sessions, thinking they had no authority under the statute to give costs as no appeal was entered, refused to hear the evidence which the parish-officers were prepared to offer, in order to show that they had been unnecessarily put to great expence. — POOLEY now moved for a *mandamus* to be directed to the justices of the county, commanding them to hear evidence on the subject, as (he said) that the magistrates had refused to hear the evidence, not because they would not in their discretion have awarded costs to the parish-officers, but because they thought they had no jurisdiction. And he contended that the Court of Quarter Sessions have the same authority to award costs in cases where notice of appeal against a poor-rate has been given, though no appeal be entered, as they have in the instance of a notice of appeal against an order of removal. The stat. 8 & 9 *W.* 3. *c.* 30. § 3. to prevent vexatious appeals against orders

If a person give notice of his intention to appeal to the Quarter Sessions against a poor-rate, but do not enter his appeal, the Sessions cannot award costs to the other party under the stat. 17 G. 2. c. 38.

of removal, authorizes the Court of Quarter Sessions to give costs upon appeals, "or upon any proof before them of notice of "any such appeal to have been given, &c. though they do not "afterwards prosecute such appeal, &c." And the stat. 17 *G.* 2. *c.* 38. speaking of appeals against poor-rates, enables the justices at the Sessions "to award to the party for whom such appeal "shall be determined, reasonable costs *in the same manner* "*that they are empowered to do in case of appeals concerning the* "*settlement of poor persons*, by stat. 8 & 9 *W.* 3. *c.* 30." This statute, therefore, referring to the former one, 8 & 9 *W.* 3., meant to extend to both the cases there mentioned; to cases where notice of an intended appeal has been given, though afterwards abandoned, as well as to cases where the appeal has been heard. By the former statute they are both put upon the same footing; and the latter statute intended to give power to the Sessions to award costs in the instance of a poor-rate in all cases where before they could give costs in the instance of an order of removal. — But THE COURT thought that the Quarter Sessions have no authority to award costs under the stat. 17 *G.* 2. *c.* 38. unless an appeal has been entered and determined; that the determination of the appeal was a condition precedent to their power to give costs, the words of the act being "may award to the party for whom such appeal "shall be determined reasonable costs," &c. and that the subsequent words "in the same manner that they are impowered to do "in case of appeals concerning the settlement of poor persons," &c. only related to the mode in which those costs are to be recovered. That by referring to the former statute under which costs may be given in two instances, and by mentioning only one of those instances in the latter statute, it was evident that the legislature did not intend by the latter to authorize the Sessions to give *costs in* both cases. — Rule refused.

IX. *Of Certiorari.*

See stats. 5 *G.* 2. *c.* 19. 13 *G.* 2. *c.* 18.

All orders of justices may be removed by *certiorari.*

1018. A *certiorari* will lie to remove an order of justices, even in cases where they are empowered by statute finally to hear and determine; for the Court of King's Bench, having a superintendency over all courts of an inferior criminal jurisdiction, may in the plenitude of its power award a *certiorari*, unless restrained by the express negative words of the legislature.

But such orders cannot be removed before appeal. — Str. 991. and in Rex *v.* Frasier, a *certiorari* on the turnpike act

1019. *Regula Generalis, E. T.* 1 *Ann. Salk.* 147. — No *certiorari* shall be granted to remove an order of justices, from which the law has given an appeal to the Sessions, before the matter be determined on the appeal, because it hinders the privilege of appealing; and if any order be removed before appeal, it shall be sent down again.

was quashed because it had issued before appeal, M. T. 1781.

Unless the time limited for appealing be expired.

1020. *Rex* v. *Shellington*, *M. T.* 4 *Ann.* 1 *Salk.* 147. — HOLT C. J. said, that if the time of appeal be expired, that case is not within the above rule; but that advantage must be taken of this rule upon the motion to file the order, for that after it is filed it is too late.

The *certiorari* to remove an order

1021. *Rex* v. *Warminster*, *M. T.* 8 *G.* 1. *Stra.* 470. — An exception was made to an order of Sessions, that the *certiorari*

should have gone to the two justices, and not to the Sessions, because it did not appear that any act had been done at Sessions either to confirm or reverse the order. As to this last matter, THE COURT held that the order was well returned by the Sessions. — And EYRE J. said, it had been so determined already; for the justices are supposed to return all the orders they make to the Sessions, where they are to be recorded. (*a*)

appealed against, may be directed to the Sessions, and returned by them.

1022. *Rex* v. *Borough of Warwick*, *M. T.* 8 *G.* 2. *Str.* 991. — It was held, that the above rule extends only to the case where there is a limited time for appealing, as to the next Quarter Sessions.

And therefore extended only to these cases where the time is limited.

1023. *Rex* v. *Harman*, *H. T.* 12 *G.* 2. *And.* 343. — A *certiorari* having been granted for the removal of several orders for appointing overseers, and also for convicting the persons so appointed for refusing to act in the office, a *supersedeas* was prayed, *quia erronice emanavit:* It was argued, that an appeal lies in this case, by 43 *Eliz. c.* 2. § 6., and that a *certiorari* doth not lie till an appeal is brought, for that the party cannot pass over a Sessions *per saltum*. (*b*) And in the case *Rex* v. *Warwick* (*c*), Lord *Hardwicke* C. J. said, that where an appeal lies, a *certiorari* granted may be taken off the file. — It was also objected, that in this case, there being several orders, there ought to have been more than one *certiorari*. — But it was held by THE WHOLE COURT, that where an order of justices is made, and there is but one party who hath a right to appeal, (as in the case of orders of appointment, and of orders made upon an overseer's absence or negligence in the execution of his office,) and he waives his privilege of resorting to the Sessions, and elects to come to this Court, a *certiorari* lies for removing the orders, there being no reason against the party's being received; for the authority of this Court is never taken away by an act of parliament, without special words therein for that purpose. But where there are two parties having a right to appeal, and the time of appeal being fixed by the law, as in the case of settlements, where the time is limited to the first Sessions, it is not reasonable to grant a *certiorari* till the time is elapsed: and so is the rule in *Salk.* 147. to be understood. In the present case, there being no time set for appealing, if it be a sufficient objection to a *certiorari* that an appeal lies, a *certiorari* can never be granted. — LEE C. J. also said, there may be cases so circumstanced, where a *certiorari* has been, and ought to be denied; and such was the case cited of *The Inhabitants of Warwick*, where a *certiorari* was prayed pending a Sessions, and the party had made his election by appealing thereto. And he said, that he would not assert, an appeal does lie as well upon an order for refusing to act as overseer, as on an order for negligence in the office, the words of the statute being very general. — As to the other objection, THE COURT said there is no weight in it; as all the orders removed relate to the same persons, and the same matter. The motion was therefore denied.

Several orders may be removed by one *certiorari*; and where an appeal is given, but no time limited in which it is to be brought, the writ may be sued out before appeal.

(*b*) Salk. 147. Farr 10. 6 Mod. 40.

(*c*) Supra.

2 Burr. 1042. 1 Black. 231. S. C.—3 Burr. 1458. Cowp. 524.

(*a*) In the case of Rex v. Eaton, Mr. Justice *Buller* said, that justices ought in all cases to return *convictions* to the Sessions, whether an appeal lies or not, that the crown may not be deprived of its share of the forfeitures; and when that is done, a return of *a copy* to the *certiorari* is good. 1 T. R. 285.

But not until after the next Sessions, except by the person who has the right of appealing.

1024. *Rex* v. *Houlditch*, *T. T.* 13 & 14 *G.* 2. — An order of justices appointing overseers was returned by *certiorari* into the Court of King's Bench before the *next Session* was held, so that there was no opportunity of appealing. — THE COURT: This seems to be a manifest injustice, and an attempt to take away the benefit of appeal from the person who was entitled to it. The party who has the right of appealing may remove it if he thinks proper, and so was the case of *Rex* v. *Harman*. (*a*)

(*a*) *Ante*, pl. 1023.

A *certiorari* lies after neglect to appeal to the next Session, and appeal dismissed at subsequent Session.

1025. *Rex* v. *Hanley*, *E. T.* 22 *G.* 3. *Cald.* 172. — Two justices of the *West Riding* in *Yorkshire* made an order of maintenance, dated 29th *May* 1781; it was served on the defendant on 30th *June* following, and the next Session was on the 18th *July*. The defendant appealed against this order to the *Michaelmas Sessions*, which was held by adjournment on 10th *October* 1781, when the appeal was dismissed, because it should have been made to the *Midsummer Sessions*, on *July* 18th 1781. In *Michaelmas Term* 1781, a *certiorari* issued to remove these orders into the Court of King's Bench; and on a rule to show cause why the order of Sessions of 10th *October* 1781, should not be quashed, it was contended, that as the defendant had neglected to appeal in proper time, he could not now come *per saltum*, and avail himself of any objection that might be made to the said order. — THE COURT seemed to think, that if the defendant had meant to take exceptions to the original order, he should have done it by appeal in due time to the Sessions; as they could give relief as well upon the form as upon the merits; and that having declined the bringing of his case before the proper jurisdiction, in the first instance, he ought not now to be assisted by the Court *per saltum*; but they gave time to look for authorities to justify such an interference. — A few days afterwards, CHAMBRE admitted, that the order *might* be brought up by *certiorari*, without any appeal having been previously lodged at the Sessions within time; and he stated the general rule as laid down in 1 *Salk.* 147. (*b*) that no *certiorari* shall be granted to remove orders of justices before the determination on appeal to the Sessions, unless the time of appeal be expired, because it otherwise hinders the privilege of appealing; consequently that the Court had a general authority to interfere; and that in the present case, in which the defendant had declined an appeal within the period prescribed by law, was not within the exception. He also said, that this rule was farther explained in the case of the *Borough of Warwick* (*c*), which adjudged, that it was only in cases wherein the time of appeal was limited, and not where it was left open at any time, that this general authority of the Court was abridged. He added, that, as the *certiorari* appeared to have been moved in time, he should not press the Court upon the form of the present rule, and, without a reasonable prospect of success, put the party to the expence of another. — PER CURIAM: The original order of adjudication of two justices must be quashed, and the order of Sessions, dismissing the order of adjudication, affirmed.

(*b*) *Ante*, pl. 1019.

(*c*) *Ante*, pl. 1022.

The return to a *certiorari* need not be under seal.

1026. *Rex* v. *Pickersgill*, *E. T.* 23 *G.* 3. *Cald.* 297. — On a rule to show cause why the return to a *certiorari* to remove an indictment for a misdemeanor from *Hicks's Hall* should not be quashed, because the return was not under seal in compliance with the writ, which runs, "To our justices, &c. We command that you, or one

"of you, do send under your *seals*, or *the seal of one of you*," &c. — BULLER J. observed, that it had been usual not to return *coroners' inquests* under seal, upon which the motion was withdrawn. (*a*)

1027. *Rex* v. *The Justices of Glamorganshire*, *T. T.* 33 *G.* 3. 5 *T. R.* 279. — On a rule for a *certiorari* to remove certain orders of the justices at the Sessions touching the repairing and rebuilding of a county bridge, it was objected, that the requisitions of the statutes 5 *G.* 2. *c.* 19. and 13 *G.* 2. *c.* 18. had not been complied with. The 5 *G.* 2. *c.* 19. § 2. enacts, "That no *certiorari* shall be "issued to remove any orders of justices, unless the party prose- "cuting such *certiorari*, before the allowance thereof, shall enter "into a recognizance thereof, with sufficient sureties in 50*l.* with "condition to prosecute the same," &c. The 13 *G.* 2. *c.* 18. § 5. enacts, "That no *certiorari* shall be granted to remove any judg- "ment, order, or other proceedings before justices, unless such "*certiorari* be applied for within six calendar months next after "such order, &c. and unless the party suing forth the same hath "given *six days' notice* thereof in writing to the justices," &c. (*b*) and they said that neither of these three directions had been observed; the prosecutor had entered into no recognizance; the writ was not applied for within six months; and there had not been six days' notice to the justices before the application for the rule to show cause. (*c*) — WOOD and BEVAN, in support of the rule: In answer to the first objection relative to the time of the application; the order principally complained of, and which confirms the other proceedings, was made at the last *Octoler* Sessions; the application therefore in *Hilary* Term was sufficiently early. With regard to the recognizance, that may now be entered into before the issuing of the *certiorari*; but it would have been absurd to have given the recognizance before it was ascertained that the Court would grant the writ. And as to the notice, the notice of this rule, which gave the justices an apportunity of showing cause why the *certiorari* ought not to issue, is a sufficient notice

The six days' notice required by 13 G. 2. c. 18. § 5. must be given before making the motion for a rule to shew cause why a *certiorari* should not be granted.

(*a*) This was one of the errors assigned before the House of Lords in Rex *v.* Atkinson, 10th May 1785, but was abandoned upon the argument.

(*b*) This action not necessary in removing indictment, Rex *v.* Battams, 1 East, 298.

(*c*) But the words at the conclusion of this section of the statute 13 G. 2. c. 18. are "to the end that such justice, "or the parties therein concerned, may "show cause, if he or they shall so "think fit, against the issuing or grant- "ing such *certiorari*." However it was considered in Rex *v.* Nicholls, H. T. 25 G. 3. that it was necessary to give notice before the rule to show cause is applied for. January 25, 1785, *Lawrence* moved on behalf of the defendant, for a *certiorari* to remove a conviction on the statute 11 G. 1. c. 30. § 2. & 39. for obstructing excise officers in the execution of their duty, on an affidavit that the officers were not sworn in the defendant's presence, and that only his servant was charged with the obstruction. The Court granted a rule to show cause on the 3d of February; and on the 10th of February, no cause being shown, the rule was made absolute. In Easter term following, Sir T. Davenport moved to quash the *certiorari*, because sufficient notice had not been given to the justices; no notice having been given to them before the application for the rule to show cause, and the rule itself having only been served on one of the justices on the 29th, and on the other on the 31st of January. In T. T. *Lawrence* showed cause against the rule to quash the *certiorari*, insisting that the rule *nisi* was notice to the justices, and that it had not been made absolute until after six days from the time of service — But the Court said it had been the practice to give notice before the rule was first applied for, and they made the rule absolute for quashing the *certiorari*.

within the meaning of the act of parliament. This is warranted by the practice under another statute (*a*), which enables the Court in cases where the parties have neglected to bring on their issues to be tried according to the course and practice of the Court, upon motion made in open Court (due notice having been given thereof) to give judgment as in case of a nonsuit; under which it is not usual to give any other notice than that of the rule to show cause why there should not be judgment. — LORD KENYON C. J. The formal objection, to the want of notice, must prevail in this case. The act of parliament positively requires six days' notice to be given; and it is the usual practice to give that notice. Nor is notice of the rule to show cause sufficient, because that was granted on improper grounds: had the want of notice been disclosed when the rule was applied for, the Court would not have given even a rule to show cause; and THE REST OF THE COURT were of the same opinion.

(*a*) 14 G. 2. c. 17.

A power given to Sessions *finally to determine* an appeal does not take away the *certiorari*.

1028. *Rex* v. *Jukes*, *E. T.* 40 *G.* 3. 8 *T. R.* 542. — This was a conviction on 36 *G.* 3. *c.* 60. moved by *certiorari* into the Court of King's Bench. The ninth section enacts, "that if any person "shall think himself aggrieved by the judgment of the justice, he "may appeal to the next General Quarter Sessions, who are em- "powered to hear and *finally determine* the matter of the said ap- "peal." It was objected that the writ of *certiorari* was in effect taken away by the words "and *finally determine*" the same. — But LORD KENYON C. J. said, that would be against all authority; for the *certiorari* being a beneficial writ for the subject could not be taken away without express words; and he thought it was much to be lamented in a variety of cases that it was taken away at all.

A *certiorari* to remove an order of Sessions on an order of removal, must be moved for within six calendar months after such order of Sessions made, and six days' notice of such motion must be given to the Justices, pursuant to 13 G. 2. c. 18. § 5. notwithstanding the order of Sessions was made subject to the opinion of this Court on a case to be stated, which case was afterwards stated, and settled by the Justices at Sessions.

1029. *Rex* v. *Justices of Sussex*, *T. T.* 53 *G.* 3. 1 *M. & S.* 631. — D'OYLEY obtained a rule *nisi* in *Easter Term* for a *certiorari* to remove an order of the *Sussex* Sessions, in an appeal between the parishes of *B.* and *S.* The affidavits on which the rule was obtained, stated, that the appeal in question had been heard at the last *Michaelmas* Sessions for *Sussex*, when the order of removal was confirmed, subject to the opinion of this Court on a case to be stated. That a case had been accordingly drawn by counsel for the parish of *B.* in *November* last: which, however, was not approved of by the solicitor for *Slinfold*; but although frequent applications were made to him, he would not state his objections. The case was afterwards settled by the Court at their *Epiphany* Sessions, and a copy sent to the solicitor for the respondents; and he was again applied to, to have the case set down for argument. This request he refused to comply with; but at the same time gave the solicitors for the appellants to understand, that they need be under no apprehension, as he would consent to a *certiorari* issuing, without regarding whether the six months had expired or not. Under the impression that the *certiorari* would be consented to, the usual notice to the justices as required by stat. 13 *G.* 2. *c.* 18. § 5. had not been given. — On showing cause against the rule, COURTHOPE relied on the words of the statute. — And in support of the rule D'OYLEY, contended, that the statute was only intended to enable justices to show cause against the *certiorari* if they should think fit, and did not apply to this case, where the justices themselves had settled the case, and thereby expressed

their desire to have it brought up; and cited Lord *Kenyon*'s words in *Rex* v. *Battams*, 1 *East*, 298. — LORD ELLENBOROUGH C. J. The order of removal was, in the first instance, a summary proceeding; and the order of Sessions thereupon was a revision of that which was originally a summary proceeding. I find nothing in the language of Lord *Kenyon*, on which an argument has been raised, to the contrary; it is not applicable to the present case. Admitting that the magistrates may have wished, at the time when they settled the case, to have brought it up; still there may be reasons why they might think fit to show cause; and unless it can be shown that it could serve no possible end to give them six days' notice, we cannot so presume. The statute appears to me imperative. — The other judges concurring. — Rule discharged. The application for a *certiorari* was renewed by D'OYLEY, on a subsequent day, in the same term, (1 *M.* & *S.* 734.) the six days' notice having, since the former rule was discharged, been given to the justices, as required by stat. 13 *G.* 2. *c.* 18. § 5. He urged, as an excuse for the lateness of the application, that the case had not been finally settled till the *Epiphany* Sessions, before which time the parties could not come to the Court for the removal of the order; and the delay in settling the case was attributable entirely to the other side. Admitting, in general, that the six months would run from the time when the order of Sessions was made, which, in this case, was at the *Michaelmas* Sessions: still the above circumstances took it out of the general rule. He cited *Rex* v. *Winpenny*, 34 *G.* 1. where a similar application for removing an order for the maintenance of a bastard child, was made after the six months, and allowed. — LORD ELLENBOROUGH C. J. The statute expressly requires, that the *certiorari* shall be applied for within six calendar months after order made; and I think it will be attended with beneficial consequences if we put a strict interpretation upon this clause, as it will have a tendency to accelerate the settling of cases which are intended to be brought up for our revision. — BAILEY J. In strictness the case ought to have been settled at the *Michaelmas* Sessions *sedente curiâ*. — Rule refused.

And the *certiorari* must be applied for within six calendar months after making the order of Sessions, and not within six months after settling the case.

X. *Of Evidence.*

1090. *Rex* v. *Creech St. Michael's E. T.* 14 *G.* 3. *Burr. S. C.* 765. — On an appeal against an order for the removal of *J. E.*, *G.* his wife, and their six children, from *C.* to *P.*, it appeared, that *J. E.* had run away, and therefore in order to prove that he was born in the parish of *P.*, the following copy of a register was produced, taken from the parish register of *P.*: "Christenings "1735, *J.*, son of *J. E.*, and *M.* his wife, baptised *Decem-* "*ber* 5." It was also proved by one *J. C.*, that the pauper had lived many years since with him; that the *J. E.* who lived in *P.*, and who had died long ago, was considered as the pauper's father, and that *M. E.*, who still lived in *P.*, was understood to be his mother; and that he, the witness, had heard him call her "mo-"ther." It was found that the mother had been *subpœnaed*, but she did not attend, and it did not appear that she was unable so to do. But the Sessions were of opinion, that this was not sufficient evidence to *prove the birth of*, and to *identify* the pauper, as bet-

Copy of a parish register of christening, and circumstantial evidence of identity is sufficient to prove a *birth* in a particular parish.

ter evidence might have been adduced for that purpose; and therefore they vacated the order, and stated the above case.—LORD MANSFIELD seemed to think that the evidence was sufficient; and after argument, the order of Sessions was quashed, and the original order affirmed.

Persons not assessed to a parish, though liable to be rated, are good witnesses.

1031. *Rex* v. *South Lynn*, *T. T.* 34 *G.* 3. 5 *T. R.* 664.—On an appeal against an order of removal, where the settlement was contended to have been gained by a residence of 40 days, on a tenement of 10*l.* a year in the parish of *S. L.*, the respondents called *C. N.* the owner of the said house in *S. L.* with other estates there, and an occupier of a small garden ground in the same parish, his own property, and also *S. N.* and *A.* his wife, which *S.* is also an occupier of a dwelling-house in *S. L.* of 5*l.* a year; but neither of them was assessed to the poor's rate of *S. L.*; whose evidence the Court rejected on the ground of their being rateable, and therefore interest in the event of the appeal. It was contended in support of the order of Sessions on this point of the case, that although the Court in *Rex* v. *Prosser* (*a*) determined that liability to be rated was no objection to the witness who was there called to prove that the appellants ought to have been inserted in the existing rate, yet that was under very particular circumstances. There the appellants themselves insisted upon their right to be rated for the sake of giving them votes in *L.*: and they themselves called the witness whose liability was objected to by the other side: but it was properly decided that he was a competent witness for that purpose; for if the persons themselves, whose rating was in question, waived the objection, no other person had any interest in objecting to it. And it was properly observed by the Court, that as the witness himself could not have been affected by the existing rate, he could *not be interested* in the evidence he gave on that occasion. But here the case is different, for the witnesses having a permanent property in the parish, for which it is found they were liable to be rated, are directly interested in defeating the settlement of these children in their own parish, as they would be liable to their future maintenance. Otherwise, the reason for admitting the competency of these witnesses will also extend to admitting the evidence of a parishioner who is in fact rated, provided he has paid the rate; because it may equally be said in that case that such person having paid his quota can have no interest in the application of the money collected under it; and in both cases the party is liable to all future rates.—LORD KENYON C. J. With regard to the point, respecting the competency of the witnesses, I see no reason to depart from the opinion given in *Rex* v. *Prosser*.

(*a*) 3 T. R. 114.

Parol evidence of an order of removal proved to be lost, is sufficient.

1032. *Rex* v. *Metheringham*, *H. T.* 36 *G.* 3. 6 *T. R.* 556.—The pauper, being settled at *R.*, was hired on the 9th of *May* 1788, by *H.* of *B.*, in the same parts, to serve him in husbandry from *Old May-day* then next, for a year, at the wages of 5*l.* The pauper accordingly entered on his service, and during his continuance therein *H.*'s son, who then resided with his father and assisted in looking after the farm, was ballotted to serve in the militia; whereupon the pauper, at the son's request, and with the master's privity, in consideration of a sum of money paid to him by the son, consented to be sworn in as the son's substitute, and was sworn in accordingly, but still continued in his said service, and

stayed therein till within 10 days of the expiration of his year, when the militia being called out, the pauper left his service to join the regiment; and the master deducted from his year's wages for the days then wanting to complete the year's service. Some years afterwards, the pauper being resident at *R.*, was removed from thence by an order of two justices to *N.* in the same parts, which order was unappealed from; and upon the hearing of the appeal now depending, the appellants did not produce the said order of removal from *R.* to *N.*, or the duplicate thereof, but proved *by parol evidence* the existence of such former order, the pauper's removal under the authority thereof from *R.* to *N.*, and the subsequent loss of the said order and duplicate; and that no appeal had ever been made against the same. It appeared also that it was not the practice in those parts to file orders of removal at the Quarter Sessions which were not appealed against.—LORD KENYON C. J. The Sessions have stated the existence of the order at one time as a fact; and they have stated the evidence from which that conclusion was drawn, which was legal and sufficient evidence of it.

1033. *Rex* v. *St. Mary Magdalen, M. T.* 43 *G.* 3. 3 *East*, 7.—An order of Sessions was returned into this Court by *certiorari*, reciting that at the General Quarter Sessions for the county of *S.*, &c. an appeal was made by *J. R.*, Esq. against a rate or assessment made for the relief of the poor of the parish of *St. M. M., B.*, in the said county, on the ground of being overrated; which rate was entitled, "A rate or assessment made 3d of *June* 1801, "by the *governors and directors of the poor of the parish of St. M. M., Bermondsey*, in the county of *Surrey*, for the relief of "the said parish, upon all and every inhabitant, &c. pursuant to "the act of parliament made for amending and enlarging the "powers and rendering more effectual the act of parliament made "for ascertaining and collecting the poor's rates, and for better "regulating the poor in the said parish, and for other the pur-"poses therein mentioned, at the rate of 6*s.* in the pound," &c. which rate was allowed and confirmed by the justices in Sessions. Thereupon, upon due proof that the notices required by the said acts had been given by the appellant, and that he had entered into recognizance to try the appeal, and to abide the judgment of the Court, and to pay such costs as might be awarded: and upon hearing counsel on both sides, examination of witnesses upon oath, and the premises fully considered; it was ordered by the Sessions that the appeal should be allowed, and the rate on the appellant reduced, &c.; and that the said governors and directors should forthwith pay to the appellant 30*l.* cost: subject to the opinion of this Court on the following question: "Whether the governors "and directors, &c. appointed by the several acts in that behalf "passed, were legal witnesses for the respondents on the hearing of "the said appeal; *T. C.*, one of the governors and an inhabitant, "being tendered on behalf of the respondents, and rejected by "the Court?" The stat. 31 *G.* 2. *c.* 45. § 1, 2. enacts, that the churchwardens, overseers of the poor, and vestrymen of the parish of *St. M. M., B.*, or any nine or more of them, shall meet in the vestry-room in *Whitsun* week, or oftener, from time to time, as occasion shall require, and ascertain the amount of the rate for the relief of the poor, and within eight days afterwards to make

Persons appointed by an act of parliament governors and directors of the poor of a certain parish, and made liable upon appeal against a rate made by them to the payment of costs in case the Sessions should award any to the appellant, cannot be witnesses on such appeal; though in truth only *trustees*, and entitled to be reimbursed such costs out of the parochial fund; for they are parties to the cause, and liable to the costs in the first instance.

an assessment accordingly. By § 8. the same body at a public meeting, shall, if they think fit, annually or oftener, appoint a treasurer (removable at their pleasure) for the receipt of the monies to be collected by the said rates, and all other monies applicable to the relief of the poor of the parish, who shall account for the sums so received, and pay over the balance to the persons appointed by the body to receive the same, to be applied to the purposes of the act. And by § 16. such rates are to be collected either by the churchwardens and overseers or certain collectors chosen by the body, in the manner therein mentioned. By § 19. if any person shall find himself aggrieved by the rate, he shall first apply for relief to the vestry of the parish, and if not relieved shall be obliged to pay the rate, and then upon appeal to the next General Quarter Sessions holden, &c. if it appear to the justices that he has overpaid, they may order the money to be refunded. By § 9. amended by stat. 31 *G.* 3. *c.* 19. § 1. upwards of 50 of the principal inhabitants of the parish by name, together with the resident justices of the peace, rector, churchwardens, and other parochial officers for the time being, "shall be called "governors and directors of the poor of the said parish;" to whom all the powers given by the first act to the vestry are transferred (except that of electing the governors and directors). And a method is pointed out of making such election, in case of a vacancy by the death or removal from the parish of any of the persons named: which governors and directors are disqualified under a penalty from having any interest in any contracts to be made by them for the relief of the poor. But by the first act they are enabled to make by-laws concerning the disposition of the money raised and for the regulation of the poor; and any five or more of them may direct the payment of monies by the treasurer. And by § 21. of the first act, all laws relating to the poor, not thereby altered, are to remain in force. By § 6. of the last act, the governors and directors are at all meetings to pay their own expences. And by several subsequent clauses, in all cases where justices of the peace are empowered to proceed on the complaint of the churchwardens and overseers of the poor, they may proceed in like manner on the complaint of the governors and directors. And it is enacted, "that *any inhabitant* of the said "parish, although rated and paying rates for the relief of the "poor, *may upon any trial, hearing, examination, or otherwise, "touching or concerning the execution of this or the former act, be "deemed a competent witness.*" Also the said governors and directors shall *sue and be sued* for all matters, &c. *in the name of their treasurer for the time being*, and he shall be *indemnified out of the monies arising under the said acts.* Also any person appealing to the Quarter Sessions, shall, besides giving a certain notice in writing to the treasurer or clerk to the said governors and directors, enter into a *recognizance to the said governors and directors*, before some magistrate, *conditioned to try his appeal, and abide the order of, and pay such costs as shall be awarded by the justices at such Quarter Sessions*, and the Sessions, on due proof of such notice, &c. shall hear and finally determine the matter of such appeal in a summary way, "*and award such costs to "the party appealing or appealed against*, as the said justices shall "think proper."—LAWES, in support of the order of Sessions,

maintained that the witness tendered by the respondents, who was in truth one of the parties to the suit, was properly rejected as a witness. 1st, By the general rules of law no party to a cause can be also a witness, it being contrary to the first principles of justice independent of any pecuniary interest. 2dly, No person interested in the event can be a witness; and here the person tendered had a direct interest, as the stat. 31 *G.* 3. enables the Sessions to award costs against either of the parties to the appeal; and in fact costs were awarded against the respondents (of whom the witness was one), in this very case. It cannot vary the consideration of the question that he stood in the character of a bare trustee; for though in some cases persons standing in that character have been admitted as witnesses, though legally interested in the event; yet never where the same person was a party on the record, and also liable in the first instance to the payment of the costs. Therefore an executor who was lessor of the plaintiff in an ejectment, though he had no beneficial interest, could not be received as a witness; nor in like manner a *prochein amy* suing for an infant; nor even a mere stranger, who has undertaken to the attorney in the cause to be answerable for his costs. Then, 3dly, the clause enabling inhabitants rated to be witnesses does not reach this case. — He was then interrupted by LORD ELLENBOROUGH C. J., who observed, that it lay on the other side to produce some authority to show, that one who was party to the suit and liable to costs, though a trustee, had ever been admitted as a witness in the cause. — NOLAN and WETHERELL *contrà*, admitted that they had not met with any case exactly like the present; but the nearest was *Rex* v. *Woodland* (*a*), where on the first hearing of the case the Court were of opinion that a person who was rated and paid for land which he rented in the parish was a good witness for the parish, his landlady being under covenant to reimburse him again such payment. An executor who takes no beneficial interest under the will is a competent witness to prove the testator's sanity (*b*); and so to prove a codicil setting up again the first will after a second made (*c*); and yet he would be liable in the latter case to refund what he had paid away if the will were set aside. So in *Weller* v. *The Governors of the Foundling Hospital* (*d*), where the action was brought for digging a well and erecting a pump for the hospital, several of the governors were examined as witnesses for the defendants, though it was objected that they were parties on the record: — but LORD KENYON C. J. answered, that they were sued in their corporate and not in their natural and individual capacities. So here the respondents were not answerable for their costs in their individual capacities;

(*a*) 1 T. R. 261. The first case came on to be argued in Michalmas, 26 G. 3. The counsel were going upon the argument of fraud, but were soon interrupted by Lord *Mansfield*, C. J., who said — The great point here is as to the justices not having received the testimony of Northcote. It was objected to his competency that he was assessed to the parish rates: but the answer is, that it appears there was an agreement between the landlord and tenant that the former should indemnify the latter from the assessment; and the tenant had a right to deduct it out of his rent: therefore the Sessions ought to have heard him. M. S.

(*b*) Goodtitle *v.* Welford, Dougl. 139. and Lowe *v.* Jolliffe, 1 Blac. Rep. 365.

(*c*) Baillie *v.* Wilson, cited 4 Burr. 2254.

(*d*) Peake's Ni. Pri. Cases, 153.

but were entitled by the necessary construction of the act of parliament, though there were no express provision for that purpose to direct the payment to be made in the first instance out of the parochial fund placed under their controul. But further they urged the incongruity which would arise in the construction of the act, if by the express enactment of the legislature an inhabitant were made a competent witness who had a direct and beneficial interest in the event of the suit; and yet a governor, who as such had no beneficial interest and a mere nominal liability, should be deemed incompetent. From whence they argued, that by the exclusion of the greater was necessarily intended the exclusion of all minor interests, especially in the same persons. — LORD ELLENBOROUGH C. J. Ultimately the governors may not be liable to pay the costs out of their own pockets; but in the first instance and *quoad* the appellant, they are the persons against whom the legislature have directed the Sessions to award costs. The words of the act are, that the Sessions shall hear and determine the matter of the appeal, "and award such costs to the *party appealing* " or *appealed against* as the justices shall think proper." Now who were the parties appealed against but the governors themselves? They are the persons to whom the act directs that the recognizance shall be entered into by the appellant to pay costs in case they shall be awarded against him. They, then, are the persons liable in the first instance, although they may afterwards be reimbursed out of the parochial fund. There are many cases to be found like that which has been mentioned under Mr. *Jolliffe*'s will, where persons clothed with naked trusts have been admitted as witnesses; but no such case can be quoted where the person was both party to the suit and liable individually to costs. The case of *Weller* v. *The Governors of the Foundling Hospital* was that of a *corporation* sued, and therefore the corporation were only liable in their aggregate, and not in their individual capacity. But nothing appears in these acts of parliament to show that the legislature meant to make these governors a corporation: they have no common seal, nor any other criterion of incorporation. With respect to the case of *Rex* v. *Woodland*, where the witness was indemnified by another person, it is enough to say that no such circumstance is found here; *non constat* that the governors ever will be indemnified. Not that I am prepared to say that an interested person being indemnified by another will therefore make him a witness: but here the witnesses were not so indemnified. Then these persons not being liable in a corporate capacity, but individually in the first instance for the costs, and being themselves also parties to the suit, there is no case which goes the length of establishing their competency as witnesses. The act has indeed said that inhabitants rated shall not on that account be disqualified from giving testimony; but there it has stopped; and an argument arises from its silence, that if it had meant to go further, and to include the governor also, it would have said so in terms: but that not being the case, we cannot include them in that provision. — GROSE and LAWRENCE Js. delivered their opinions shortly to the same effect on the construction of the act. — And LE BLANC J. added, that there was no incongruity in the legislature having expressly made the rated inhabitants witnesses, and having omitted to extend the same provision to the governors

and directors; because it had given these latter an additional interest in the event of the appeal, by making them liable in the first instance to the costs.—Order of Sessions confirmed.

1034. *Rex* v. *Castell Careinion, M. T.* 47 *G.* 3. 8 *East*, 77. — Two justices removed *G. P.*, the wife of *O. P.* (therein stated to have been convicted of felony, and committed to *C.* gaol) and their children, by name, from *A.* to *C. C.*, against which order the latter appealed; and on hearing of the appeal at the Sessions it was proposed by the respondents to examine the said *O. P.* (then being present in court in the custody of the gaoler,) to prove that he had gained a settlement in the appellant's parish by renting a tenement of the annual value of 10*l.* and residing on part thereof, in the said parish, for more than forty days. It appeared by the evidence of *O. P.*, and also of the gaoler, that *O. P.* was at the preceding great Sessions at *C.* on the 26th of *March* 1806, convicted of grand larceny; *but the record of such conviction* was not produced on the trial of the appeal or a copy thereof; and that on such conviction he prayed the benefit of the statute, and the same was allowed to him; and that the Court of Great Sessions ordered him, for his said offence, to be kept and detained in the common gaol of the said county for 12 calendar months. The Sessions were thereupon of opinion, that by reason of the said conviction, and until the expiration of his imprisonment, *O. P.* was not a competent witness, and refused to allow the respondents to examine him concerning his settlement. The respondents then applied to the court to respite the further hearing of the appeal; which they refused; and quashed the order of removal, subject to the opinion of the King's Bench, on the foregoing statement.—ABBOT and PEAKE, in support of the order of Sessions, said, that the question in this case was not, whether the witness were bound to have answered the question, as to his own conviction, but whether it were not competent to him, no objection being made by himself, to admit the fact of his conviction; especially in a case affecting his own settlement. LORD ELLENBOROUGH C. J. We must take it upon this case, that the evidence was objected to at the sessions by the party interested in repelling it, and there cannot be the least doubt that the objection was well founded. The evidence went to affect the rights of third persons, namely, the litigant parishes; for the pauper himself is no party to the cause in court. Whether or not the witness were convicted of the felony would appear by the record; and it cannot be seriously argued that a record can be proved by the admission of any witness. He may have mistaken what passed in court, and may have been ordered on his knees for a misdemeanour: This can only be known by the record: and there is no authority for admitting parol evidence of it. — LAWRENCE J. The books are uniform in requiring the production of the record to prove a witness convicted of an offence. 2 *Hawk. ch.* 46. § 20. 3 *Com. Dig. Evidence*, 280. 5 *Com. Dig. Testmoigne.* 516. *Bull. N. P.* 292. — The other judges concurring: Order of Sessions quashed.

The party interested in a witness's testimony, who was objected to on account of his having been convicted for felony, and his imprisonment being unexpired, is intitled to insist on proof of such conviction by the record, though admitted by the witness himself.

1035. *Rex* v. *Erith, T. T.* 47 *G.* 3. 8 *East*, 539. — Removal from *C.* to *E.* On hearing an appeal from this order, the pauper stated, that he and his father lived a wandering life, having no fixed residence, but travelling the country from place to place. That his father now dead, had told him, that he (the pauper) was

Hearsay evidence of the declaration of a deceased father as to the place of birth of his

bastard child is not admissible to prove the birth settlement of such child.

born a bastard at *E.* and had pointed to that place as they were passing it, telling him that was the place of his (the pauper's) birth. That they sometimes sojourned at *E.*, and that he, the pauper, had done no act to gain a settlement. It was also proved that search had been made in the books of the parish of *E.*, and that no register of the pauper's baptism was to be found there. On this evidence only, the Sessions confirmed the order, subject to the opinion of this Court, whether, upon the facts above stated, such evidence were admissible to prove the pauper's settlement in *E.*?—LORD ELLENBOROUGH, C. J. This was a case in which the question was, Whether the hearsay declaration of the father of a bastard child, as to the place of his, the bastard's birth, were competent evidence of that fact? The only doubt which has been introduced into this case, has arisen from improperly considering it as a question of pedigree. The controversy was not, as in a case of pedigree, from what parents the child has derived its birth, but in what *place* an undisputed birth, derived from known and acknowledged parents, has happened. The point thus stated turns on a single fact, involving no question but of locality; and, therefore, not falling within the principle of, or governed by the rules applicable to, cases of pedigree; and is to be proved therefore, as other facts generally are proved, according to the ordinary course of common law; that is, by evidence to which the objection of hearsay does not apply. Upon this short ground, therefore, without further adverting to the several points made in argument, we are of opinion that evidence of the father's declaration, as to the birth-place of the pauper, the bastard, ought not to have been received; and of course that the rule *nisi* for quashing the order of Sessions must be made absolute.

A woman cannot give evidence of the non-access of her husband to bastardize her issue, though he be dead at the time of her examination as a witness.

1036. *Rex* v. *Kea*, *E. T.* 49 *G.* 3. 11 *East*, 132.—*Upon* an appeal from an order of justices removing *T. P.* son of *M. D.*, now the wife of *J. D.* by her former husband *M. P.*, deceased, from *K.* to *St. E.*; it appeared that *M. P.* married *M. D.* in 1793, who, during such their marriage, was delivered of the pauper in *K.* That *M. P.* was, at the time of the birth of the pauper, and up to the time of his own death, in 1806, legally settled in *St. E.* That the pauper had not gained any settlement in his own right. That on the 6th of *January* 1800, a marriage in fact took place between *M. D.* (by her maiden name of *H.*) and *J. D.*, and, at the time of the conception of the pauper, they were living together in *K.* as man and wife; and that *M. D.* was re-married to *J. D.* in the beginning of the present year. And after other witnesses had been examined for the purpose of proving that *M. P.* had not had access to *M. D.* at the time of the conception of the pauper, nor for many months before; and after *M. D.* (objection having been first made to her competence to prove this fact, and overruled) was examined, and it appeared from her evidence that *M. P.* had not access to her during the period aforesaid; the Sessions, as well on the testimony of the said other witnesses as to the *non-access of* M. P., *as on the evidence so given by* M. D. *as aforesaid, and not exclusively on either*, reversed the order of removal, subject to the opinion of this Court on the question, whether the evidence of *M. D.* in proof of such non-access of the said *M. P.*, her late husband, ought to have been received?—LORD ELLENBOROUGH C. J. when this case was called on, said, that to hold this evi-

dence receivable, would be in direct contradiction to *Rex* v. *Reading*, (*a*) and other cases, which were not meant to be overruled in *The King* v. *Luffe* (*b*); the Court, in that case, intending that the wife had been examined only to those facts which she might legally prove; and not to the non-access of the husband; the principle of public policy precluding her from being a witness to that fact. And the rest of the Court signifying their concurrence in this opinion, BURROUGH and CASBERD, who were to have supported the order of Sessions, said, that this case was distinguishable from others, because the husband was dead at the time when the wife was examined; and therefore, if the rule had stood merely on the ground that the giving of such testimony was calculated to promote dissension between husband and wife, it would have ceased to apply in this instance, where one of the parties was dead: but if the Court considered that the rule stood on the broad ground of general public policy, affecting the children born during the marriage, as well as the parties themselves; they could not pretend to argue in support of the order. — THE COURT unanimously assented to this. — And LE BLANC J. added, that they were bound on the statement of this case to notice the objection taken to the competency of the wife to prove the fact of non-access; for the Sessions, after hearing her evidence to that point, had declared that they found the fact as well on her evidence as on the testimony of the other witnesses, and not exclusively on either. And this ought to be noticed as an ingredient in the decision of the Court.

(*a*) Cas. Temp. Hard. 79. vol. .
(*b*) *Ante*, pl. 508.

1037. *Rex* v. *Shaw*, *T. T.* 50 *G.* 3. 12 *East*, 479. — *W. G.* appealed against a rate made upon him by the defendant; the Sessions quashed the rate, subject, &c. This was an appeal against an assessment made under a clause in a private act of parliament; a printed copy of which was offered in evidence, without any proof of its having been examined with the rolls of parliament. The Court decided, that such proof was unnecessary, and admitted the copy to be received in evidence, both parties being interested under the act of parliament. — LORD ELLENBOROUGH C. J. The appellants by their appeal assumed, that the Sessions had jurisdiction: the respondent, if he meant to deny their jurisdiction, might have staid away; but he followed the appellants to the Sessions, and appeared there to defend his rate. Then in a case like this the Sessions did right in calling upon both parties to say whether they claimed to act under the same act of parliament: and if the respondent admitted that he made the rate under the act produced, it is in derogation of justice, and a disgrace to the administration of the law to take such an objection. And the Sessions having over-ruled it upon that admission, and gone into the merits, we will not disturb their decision. — Rule discharged. — LE BLANC J. also said: Is not the respondent to begin, by showing that he had a right to make the rate under the act?

Upon an appeal against a rate made under a private act of Parliament, the respondent appearing to answer the appeal, and admitting when called upon by the Sessions, that he had made the rate by virtue of a certain act of Parliament, a printed copy of which, in the common form, was produced in Court by the appellants; and the Sessions having thereupon entered into the merits of the appeal, and decided upon them, notwithstanding an objection made by the respondents that the appellants had not given legal evidence of the jurisdiction of the Sessions to receive the appeal for want of proof of the printed copy having been examined with the rolls of Parliament, this Court refused to quash their order, which was removed by *certiorari*.

1038. *Rex* v. *Harberton*, *H. T.* 51 *G.* 3. 13 *East*, 311. — The wife and daughters (by name) of *C. H.* were removed from *H.* to

An order of Justices for re-

moving the *wife* and daughters of a pauper to the place of their settlement is supported *primâ facie*, by showing that the parish to which the removal was made was the place of settlement of the wife before the marriage. It is no evidence of a person having gained a settlement in a parish that he is described of such parish in the register of his marriage.

D., the Sessions quashed the order, subject, &c. Upon the trial of the appeal the respondents proved that *E. H.* the wife, who before her marriage was called *E. L.*, was born in *D.* of parents living there. They also proved, that in 1806 she married *C. H.* in *Chagford*; and from a copy of the registry of the marriage, which was produced, it appeared that he was therein described to be of the parish of *A.* They also examined *E. H.* the wife, who proved that the children mentioned in the order were born after the marriage; and also that her husband was with her in *H.* a little after *Christmas* last; since which time he had left her, and she had not seen him since: that he was not there when she was examined before the justices previous to nor at the time of her removal, and that she did not know her husband's settlement. — *H.* here closed their case, without giving any further evidence to account for the absence of her husband, or any further search having been made for him, or inquiry as to his settlement. The parish of *D.* produced no witnesses, nor did they offer any witnesses of the husband's settlement. — Soon after this case had been opened at the bar, THE COURT said, that there could be no doubt but that the evidence, offered by the respondents, of the wife's maiden settlement was *primâ facie* sufficient; and that it lay upon the appellants to rebut it by giving evidence of the husband's settlement in a different parish, but the Sessions having decided against the respondents, upon the supposition that they had not used due diligence in endeavouring to procure the attendance of the husband, or in accounting for his absence, or inquiring as to his settlement; without going further into the consideration of the case; they sent it back to be reheard by the Sessions, to give the appellants an opportunity of entering into their own case, and of giving evidence of the husband's settlement. And the description *in the* copy of the marriage register of the husband, that he was *of the parish of A.*, was considered to be no evidence of his having a settlement there.

Where a pauper had served a master under unstamped articles of agreement, to work with him for three years, at certain rates of weekly wages, and under certain covenants; after which he had continued to serve his master for four years longer, without coming to any new agreement; though such unstamped

1039. *Rex* v. *Pendleton*, *E. T.* 52 *G* 3. 15 *East*, 449. — The pauper was removed from *S.* to *P.* Order confirmed, subject, &c. The pauper in 1782, was engaged as a servant to Messrs. *D.* and Co. of *P.*, by the following instrument sealed and delivered, but unstamped "Articles of agreement, made this 24th of *June* 1782, "between," &c. The case set out the articles, by which it was agreed (amongst other things not material to this case) that the pauper should serve Messrs. *D.* and Co. for three years at certain wages *per* week. The pauper served Messrs. *D.* and Co. during the time stated in the instrument; and after the expiration of that time he continued on in their service for four years, without any thing further being said as to wages, and without any express engagement as to the time or conditions of such service. On the part of the appellants it was contended that there was no hiring for a year, under which a settlement could be gained; but the Court, being of opinion that a hiring might be *presumed*, confirmed the order. — BAYLEY J. (*a*) If there were premises from whence the conclusion of a hiring for a year could properly be drawn, the jus-

(*a*) The judgments of the other judges were confined to this point only; that putting the written agreement entirely out of the question, a hiring for a year might be presumed from a service for four years.

tices in Sessions were the proper persons to make that presumption. Now here there was a service for four years, and wages paid during that period, from whence they might draw the conclusion. But it has been argued here, that inasmuch as the pauper served, for some part of the time at least, under a written instrument, unstamped, we cannot look at the instrument even to see for what time it enured, and that no parol evidence could be given of any contract with reference to the subject matter of it. But though we cannot look at the unstamped instrument for the purpose of proving by it any agreement between the parties; for such is the general import of the stamp acts; yet the Court may look at it to see whether it applies to other evidence of a contract between them. As if a contract in writing be made, unstamped, for the sale and delivery of certain goods, on certain terms, the Court in an action for the non-delivery of the goods, upon a contract proved by parol evidence only, may look at the instrument to see whether it applies to the goods then sought to be recovered for; and if those goods were not included in the contract, parol evidence may be received of the contract sought to be recovered upon. So here, the Court might look at the instrument to see the duration of the first contract under it, in order to guide them in receiving parol evidence of the subsequent service, to which it did not apply. — Orders confirmed.

writing cannot be received as evidence for the purpose of proving the agreement between the parties, yet the Sessions may look at it for the purpose of seeing when it ceased to operate in order to guide them in receiving parol evidence of service for the last four years, at wages; from whence the Sessions might presume a yearly contract.

1040. *Rex* v. *Castle Morton*, *E. T.* 1 *G.* 4. 3 *B.* & *A.* 588. — For the particulars of this case, see *ante*, pl. 212.

An agreement in writing, unstamped, for the purpose of letting a tenement at a certain rent, having been lost: Held, that parol evidence of its contents was not admissible, for the sake of proving thereby the value of the tenement.

1041. *Rex* v. *St. Mary in Bury St. Edmunds*, *E. T.* 2 *G.* 4. 4 *B.* & *A.* 462. — Upon appeal against an order of two justices, by which *G. C.*, *S.*, his wife, and four children, were removed from *R.*, to *St. M.*, the Sessions confirmed the order, subject, &c. The pauper, in 1783, gained a settlement, by hiring and service, in a house called *E.* farm, which lay partly in *R.* and partly in *St. M.* He had, at different times afterwards, in the course of 30 years and upwards, and up to the time of the removal, been relieved by *R.*, while living in another parish. In the years 1813 and 1814, separate inclosures took place of lands in *R.* and *B.* Under the *R.* inclosure act, in 1813, the commissioners, in their award, ascertained and fixed the boundary line between *R.* and *St. M.* in *B.*, and thereby included within the latter, the apartment in which the pauper slept during his service at the *E.* farm; and the commissioner under the *St. M.* inclosure act, in 1814, also ascertained and fixed the boundaries of *B.* by his award, and thereby found and declared, that the boundary of the parish of *St. M.*, in *B.*, proceeded along the boundary of *R.* parish, through the *E.* farm-house, as the same had been ascertained and fixed under the *R.* inclosure. In a perambulation also made subsequently to these acts, the parishioners of *B.* included the apartment in which the pauper slept within the parish of *St. M.*, in *B.* These facts being proved by the respondents, the appellants contended, that the boundary line set out by the commissioners was not conclusive, as to the actual boundary before the award, and tendered to the Court evidence to prove, that, before the inclosure acts, the spot in question was in *R.* This evidence was objected to; and the Court, considering the

The determination of the commissioners under an inclosure act, as to the boundaries of a parish to be inclosed, is not conclusive of the fact as to what were the boundaries antecedently to such determination.

award of the commissioners as retrospective and conclusive, rejected the evidence, and confirmed the order of removal. — ABBOTT C. J. It seems to me, that great mischief might follow, if the Court were to hold, that the decision of the commissioners in this case, as to the boundaries of the parish, was conclusive, and at the same time retrospective; for many cases may be put, both of fines of lands and wills, in which such a decision might materially affect the rights of third persons. The best and safest course, therefore, will be, to hold such determination not to be conclusive evidence of what the boundaries were previously to the period when it was made. In that case the Sessions ought to have received the evidence which they have rejected; and I think, therefore, that the order of Sessions should be quashed, and the case sent back to be reheard. — BAYLEY J. If the decision of the commissioners were conclusive, to show what the boundaries of the parish were in times past, it might happen that a mistake on their part might make it necessary to apply to the Court of Common Pleas, for the purpose of amending a fine of lands, levied before the inclosure; and if the two parishes between which the boundary was ascertained, lay in different counties, that Court would be unable to amend the fine. That is one inconvenience which might arise from our holding such determination to have a retrospective effect. I agree, therefore, that this evidence ought to have been received. — HOLROYD J. The words of the statute do not appear to me to be retrospective: they only state that the commissioners shall ascertain the boundaries; and "after they shall be so ascer-"tained, the same shall and are hereby declared to be the bound-"aries of such parishes, &c." Now these words do not necessarily import that the boundaries to be ascertained were the boundaries before that period. Considering, therefore, that cases may occur in which mistakes made by the commissioners may affect the private rights of others, I am of opinion, that we ought not to go further than we are compelled by the strict words of the act; and I think that the evidence ought to have been received, and that the case should go back to the Sessions. — BEST J. concurred. — Case sent back to the Sessions.

Upon the trial of an appeal at the Quarter Sessions, the respondent parish proved relief granted to the father of the pauper by the appellant parish before the year 1815. The appellant parish then tendered an order of Sessions made in the year 1815, quashing an order of justices for the removal of the brother of the pauper to the appellant

1042. *Rex* v. *Knaptoft*, *E. T.* 5 *G.* 4. 2 *B.* & *C.* 883. — Upon appeal against an order of two justices, dated the 19th of *August*, 1823, for the removal of *Elizabeth Burdett*, single woman, then with child, from *G.* to *K.*; the Sessions confirmed the order, subject, &c. The respondents, in support of the order, proved that the father of the pauper, while residing in the respondent's parish, had received relief from the parish of *K.* for five years prior to 1815. The parish of *K.* then offered in evidence an order of the Court of Quarter Sessions, upon an appeal in 1815, between the same parishes, respecting the *settlement of a brother of the pauper*, by which an order, adjudging the brother to be settled in the parish of *K.*, was quashed. This was objected to by the counsel for the parish of *G.* and rejected by the Court. Another order was then produced, whereby the pauper, *Elizabeth Burdett*, was removed from *G.* to *M.* in 1822, which was afterwards quashed by consent. The appellants then called the chairman of the Court in 1815, who proved that his notes of the trial were destroyed, and that he did not remember the evidence. They then called the father of the pauper and asked him whether he was a witness at the trial in 1815;

to this he answered in the affirmative. He was then asked to what facts he was then examined; this was objected to by the counsel for the respondents. The Court thought that the question was not relevant and not admissible, and they confirmed the order of removal, subject to the opinion of this Court as to the admissibility of the evidence so tendered by the appellants. — BAYLEY J. In this case two justices, by their order, removed the pauper, *Elizabeth Burdett*, from the parish of *G.* to that of *K.* The latter parish appealed; and upon the trial of the appeal, the respondents proved that *K.* had relieved the pauper's father, while residing in the respondent parish, for five years prior to the year 1815. The appellant parish, in order to show that at the time when the relief was given the settlement of the father was not in *K.*, offered in evidence an order of Sessions made in 1815, in an appeal between the same parishes respecting the settlement of the brother of the pauper. By that order of Sessions the order of justices adjudicating that the brother was settled in *K.* was quashed. The Court of Quarter Sessions refused to receive this evidence, and my Brother HOLROYD and I, (before whom this case was argued,) are of opinion that it was properly rejected. The order of removal in the former case may have been quashed upon one of the three following grounds: either that the pauper had originally a settlement in *K.*, and acquired a subsequent settlement in another parish, or that he never had any settlement in *K.*, or that the respondents had not given sufficient proof of any such settlement. The case does not state on what ground the order was quashed. But it has been stated in the course of the argument, that the point then tried, and upon which the Sessions actually adjudicated, was, that the pauper had not at that time any derivative settlement in *K.*, because his father was not then settled there; that in fact the point tried was, whether the father's settlement was then in *K.* If we thought that the evidence of that fact would be admissible, and would be material if stated in the case, we should send it down again to the Sessions. But we are of opinion, that the order of Sessions in 1815 would not be admissible in evidence, for the purpose of showing that the pauper, in 1815, was not settled in *K.* If it be admissible at all, it must be upon the same principle upon which judgments of the superior courts are received in evidence. Now the rule upon that subject is thus laid down, in the *Duchess of Kingston's* case (*a*), by Lord C. J. *De Grey:* "The judgment of a Court of concurrent jurisdiction, directly upon the point, is as a plea, a bar, or as evidence, conclusive between the same parties, upon the *same matter directly in question* in another Court. Secondly, the judgment of a Court of exclusive jurisdiction, *directly upon the point*, is, in like manner, conclusive upon the same matter, between the same parties, coming incidentally in question in another Court, for a different purpose. But neither the judgment of a concurrent or exclusive jurisdiction is evidence of any matter which came collaterally in question, though within their jurisdiction; nor of any matter incidentally cognizable, nor of any matter to be inferred by argument from the judgment." The principle, therefore is, that the judgment of the same Court, or of a Court of concurrent jurisdiction, is conclusive evidence between the same parties upon the same subject matter directly in question in another Court; but that as to any matter arising collaterally, it

parish. And they tendered parol evidence to show that the ground of the decision of the Court of Quarter Sessions was, that the father of the pauper had not at that time any settlement in the appellant parish, and, consequently, that the son had not any derivative settlement there: Held, that even if parol evidence was admissible to prove the ground of the decision of the Sessions, still that the order of Sessions was not evidence that the father of the pauper was not settled in the appellant parish in 1815, because the father's settlement was a matter that arose collaterally on the trial of the first appeal.

(*a*) *Howell's St. Tr.* vol. xx. p. 538.

is no evidence whatever. Then the question to be considered in this case is, whether the point actually decided with respect to the settlement of the brother in 1815 is necessarily the same as that which was to be decided by the Court in the present case with respect to the sister; or whether the point now sought to be established as to the father's settlement was one which then came collaterally in question. When we consider the nature of an order of removal, it is quite clear that the point decided in 1815 is not necessarily the same as that which the Court of Quarter Sessions were called upon to adjudicate in the present instance. When a party is removed to a parish as the place of his settlement, and the order of removal is confirmed by the Sessions, that is an adjudication by them, that the pauper at the time of the order of removal was settled in the appellant parish. In the case of the *Inhabitants of Harrow* v. *Ryslip* (*a*), it was held that a confirmation of an order of removal upon appeal was final as to all parishes; because the very point decided is, that the pauper is settled in the parish to which he has been removed. But where the order of removal is quashed, the Sessions only adjudge negatively that the pauper is not settled in the appellant parish. They do not say affirmatively that he is settled in any other parish. The point decided, therefore, by the Sessions in 1815 was, that the brother of the pauper in this case was not at that time settled in the parish of *K.*; but it is said, that although that is the only point which appears to have been decided upon the face of the judgment itself, still that the point actually decided upon the evidence then adduced was, that the settlement of the father of the pauper was not at that time in *K.*, and consequently that the pauper himself had no derivative settlement there. The parol evidence was offered to prove that such was the point then litigated and adjudicated. Without deciding whether such evidence was admissible to explain the ground of the judgment, it is sufficient to say, that that was a point which arose collaterally, and, therefore, upon the principle laid down by Lord C. J. *De Grey*, the order of Sessions would not be evidence to prove that fact in another case between the same parties. For these reasons, therefore, we think that the order of Sessions ought to be confirmed. — Order of Sessions confirmed.

(*a*) *Ante*, pl. 910.

Boundaries fixed by commissioners under private inclosure act, when not binding on parish.

1043. *Rex* v. *Washbrook*, *M. T.* 6 *G.* 4. 4 *B & C.* 732. — By a private inclosure act commissioners were directed to fix and settle the boundaries of a parish in a certain manner therein specified, and to advertise in a provincial newspaper a description of the boundaries so fixed and settled. The boundaries *so fixed and settled* were also to be inserted in the award of the commissioners and to be final, binding, and conclusive. The commissioners having fixed and settled the boundaries in the mode specified, duly advertised a description of them, but the boundaries mentioned in the award varied from those which had been advertised: Held, that the commissioners had not pursued the authority given by that act, and that their award was not binding as to the boundaries of the parish.

A register of baptism *per se*, is no evidence of the place of

1044. *Rex* v. *North Petherton*, *E. T.* 7 *G.* 4. 5 *B & C.* 508. — Upon appeal against an order of two justices, whereby a pauper described as *J. R.*, otherwise *C.*, the son of *E. D.*, formerly *R.*, widow, was removed from N. P. to *W. M.*, the Court of Quarter Sessions set

aside the order of removal, subject, &c. The pauper, who was proved to be the legitimate son of *J.* and *E. R.* was born in the parish of *W. M.* In order to make out the settlement of the pauper's father, it was proved by the production of a copy of the parish register of *S.* that he was baptized in that parish. There was no other evidence of his having been born in that parish, and the Court of Quarter Sessions thought upon the authority of the case of *Rex* v. *Creech St. Michael* (*a*), that they were bound to consider the register by itself *primâ facie* proof of the place of his birth. — BAYLEY J. The register of baptism *per se* is not evidence of the place of birth. If the age of the child at the time when it was baptized could be ascertained, the register might in some cases be evidence of the place of birth. If the child were then very young, the register would be presumptive evidence that it was born in that parish where it was baptized; but if the child were not then young, the circumstance of its having been baptized in a particular parish, would afford no presumption that it was born there. Here there was no evidence to show the age of the child when it was baptized. We think therefore that the case must go back to the Sessions to be reheard, in order that they may ascertain by other evidence whether the father of the pauper was born in the parish of *S.* or not. We do not say that a register of baptism is not evidence of the place of birth when accompanied with proof of other circumstances, but that taken by itself it is not evidence of the place of birth. — Case sent back to the Sessions.

birth of the party baptized.

(*a*) *Ante*, pl. 1030.

1045. *Rex* v. *Wheelock*, *E. T.* 7 *G.* 4. 5 *B.* & *C.* 511. — COTTINGHAM moved for a rule *nisi* for a writ of *mandamus* to the justices of the peace of the county of *C.*, directing them to make a special entry on their proceedings at the last *Easter* Sessions that the order of removal of the pauper from the above parish was quashed for want of proof of the chargeability of the person removed. The affidavit on which this application was made, stated amongst, other matters, that on the trial of the appeal, the Court below being of opinion that there was not sufficient proof of chargeability of the person removed refused to enter into the merits, but quashed the order generally; and although much pressed, would not permit the clerk of the peace to make a special entry on their proceedings of the particular and only ground upon which it was quashed. — BAYLEY J. The respondents are not at all events concluded by the judgment of the Sessions, but may on the trial of another appeal against another order of removal, of the same party, explain by evidence to the Sessions the particular ground on which the former order of removal was quashed. — HOLROYD J. concurred. — Rule refused. (*b*)

Where an order of removal is appealed against, and is quashed generally by the Sessions, the appellant on the trial of another appeal may shew by evidence the distinct ground upon which the former order was quashed.

(*b*) See Rex *v.* Knaptoft, *ante*, pl. 1042.

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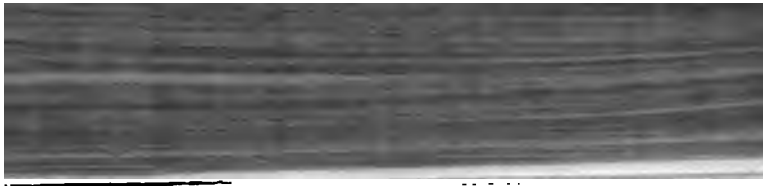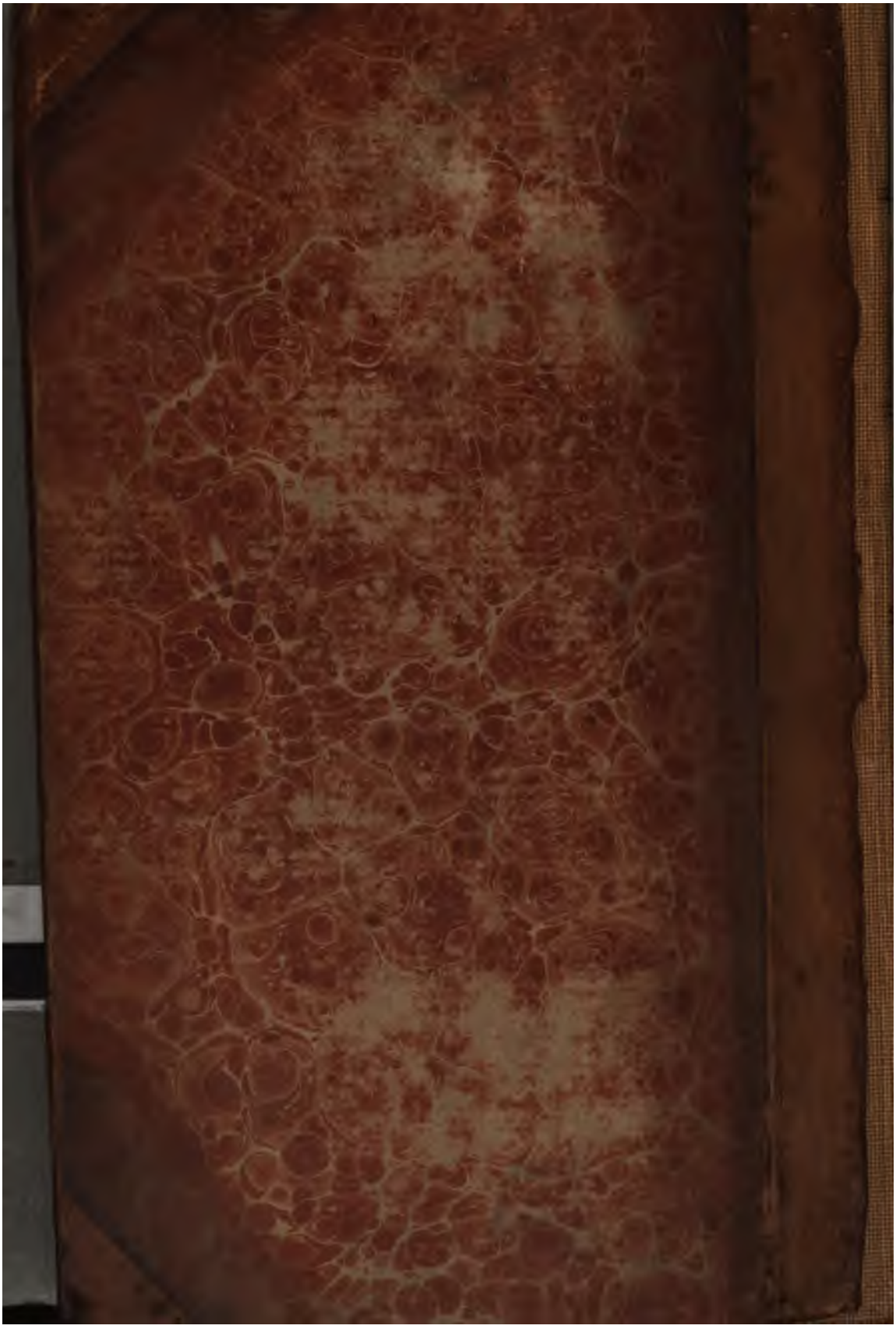
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